

(4) The amount expended by each corporation during the year for travel conducted in conjunction with research and the amount expended for travel in conjunction with education.

(Added Pub. L. 100-322, title II, §204(a), May 20, 1988, 102 Stat. 511, §4166; renumbered §7366 and amended Pub. L. 102-40, title IV, §§401(a)(4)(B), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239; Pub. L. 104-262, title III, §343(c)-(e), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106-117, title II, §204(e), Nov. 30, 1999, 113 Stat. 1563; Pub. L. 107-103, title V, §509(f), Dec. 27, 2001, 115 Stat. 997; Pub. L. 108-170, title IV, §402(b), Dec. 6, 2003, 117 Stat. 2062.)

#### REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(1)(B), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### AMENDMENTS

2003—Subsec. (c). Pub. L. 108-170 inserted “(1)” after “(c)”, substituted “any year shall be subject” for “any year—(1) shall be subject” and “functions.” for “functions; and”, added par. (2), and struck out former par. (2) which read as follows: “shall submit to the Secretary a statement signed by the executive director of the corporation certifying that each director and employee is aware of, and has complied with, such laws and regulations in the same manner as Federal employees are required to.”

2001—Subsec. (d)(2)(D). Pub. L. 107-103 made technical correction to directory language of Pub. L. 106-117, §204(e)(3). See 1999 Amendment note below.

1999—Subsec. (d)(2)(B). Pub. L. 106-117, §204(e)(1), inserted “for research and the amount received from governmental entities for education” before the semicolon at end.

Subsec. (d)(2)(C). Pub. L. 106-117, §204(e)(2), inserted “for research and the amount received from all other sources for education” before “; and”.

Subsec. (d)(2)(D). Pub. L. 106-117, §204(e)(3), as amended by Pub. L. 107-103, §509(f), substituted “an amount received” for “the amount received”.

Subsec. (d)(3)(A). Pub. L. 106-117, §204(e)(4), substituted “, the amount expended for salary for education staff, and the amount expended” for “and”.

Subsec. (d)(3)(B). Pub. L. 106-117, §204(e)(5), inserted “and the amount expended for direct support of education” after “research”.

Subsec. (d)(4). Pub. L. 106-117, §204(e)(6), added par. (4).

1996—Subsec. (b). Pub. L. 104-262, §343(c), substituted “A corporation with revenues in excess of \$300,000 for any year shall obtain an audit of the corporation for that year. A corporation with annual revenues between \$10,000 and \$300,000 shall obtain an independent audit of the corporation at least once every three years. Any audit under the preceding sentences shall be performed by an independent auditor. The corporation shall include the most recent such audit” for “The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report”.

Subsec. (c)(2). Pub. L. 104-262, §343(d), substituted “a statement signed by the executive director of the corporation certifying that each director and” for “an annual statement signed by the director or employee certifying that the director or”.

Subsec. (d). Pub. L. 104-262, §343(e), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and

location of corporations established and the amount of the contributions made to each such corporation.”

1991—Pub. L. 102-40, §401(a)(4)(B), renumbered section 4166 of this title as this section.

Subsec. (a)(1)(A). Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator”.

Subsec. (a)(1)(B). Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans' Administration” in two places.

Subsec. (b). Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in two places.

Subsec. (c). Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans' Administration” in introductory provisions.

Subsec. (c)(2). Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator”.

Subsec. (d). Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator”.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-103, title V, §509(f), Dec. 27, 2001, 115 Stat. 997, provided that the amendment made by section 509(f) is effective Nov. 30, 1999, and as if included in Pub. L. 106-117 as originally enacted.

#### [§ 7367. Repealed. Pub. L. 107-14, §8(a)(14)(A), June 5, 2001, 115 Stat. 35]

Section, added Pub. L. 100-322, title II, §204(a), May 20, 1988, 102 Stat. 512, §4167; renumbered §7367 and amended Pub. L. 102-40, title IV, §§401(a)(4)(B), 403(a)(1), May 7, 1991, 105 Stat. 221, 239, required a report to Congress on the experience through the end of fiscal year 1990 under this subchapter.

#### § 7368. Expiration of authority

No corporation may be established under this subchapter after December 31, 2008.

(Added Pub. L. 100-322, title II, §204(a), May 20, 1988, 102 Stat. 512, §4168; renumbered §7368, Pub. L. 102-40, title IV, §401(a)(4)(B), May 7, 1991, 105 Stat. 221; amended Pub. L. 102-291, §3(b), May 20, 1992, 106 Stat. 179; Pub. L. 104-262, title III, §343(a), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106-419, title IV, §402(g), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 108-170, title IV, §402(c), Dec. 6, 2003, 117 Stat. 2062.)

#### AMENDMENTS

2003—Pub. L. 108-170 substituted “December 31, 2008” for “December 31, 2003”.

2000—Pub. L. 106-419 substituted “December 31, 2003” for “December 31, 2000”.

1996—Pub. L. 104-262 substituted “December 31, 2000” for “December 31, 1992”.

1992—Pub. L. 102-291 substituted “December 31, 1992” for “September 30, 1991”.

1991—Pub. L. 102-40 renumbered section 4168 of this title as this section.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-291 effective Oct. 1, 1991, see section 3(c) of Pub. L. 102-291, set out as a note under section 7361 of this title.

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#### AMENDMENTS

1991—Pub. L. 102-40, title I, §§102, 103(a)(2), title II, §203(b), title IV, §401(b)(1), May 7, 1991, 105 Stat. 187, 199, 207, 221, added chapter heading and analysis.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 sections 2105, 5302, 5371; title 42 section 282.

#### SUBCHAPTER I—APPOINTMENTS

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7426, 7455 of this title.

#### § 7401. Appointments in Veterans Health Administration

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(1) Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries.

(2) Scientific and professional personnel, such as microbiologists, chemists, and biostatisticians.

(3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical and dental technologists, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technicians, therapeutic radiologic technicians, and social workers.

(Added Pub. L. 102-40, title IV, §401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, §§301(a)(1), 302(a), Dec. 6, 2003, 117 Stat. 2054, 2057.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4104 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Pub. L. 108-170, §302(a)(1), substituted “health” for “medical” in introductory provisions.

Par. (1). Pub. L. 108-170, §302(a)(2), inserted “chiropractors,” after “podiatrists.”

Par. (2). Pub. L. 108-170, §301(a)(1)(A), added par. (2) and struck out former par. (2) which read as follows: “Psychologists (other than those described in paragraph (3)), dietitians, and other scientific and professional personnel, such as microbiologists, chemists, biostatisticians, and medical and dental technologists.”

Par. (3). Pub. L. 108-170, §301(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: “Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.”

1992—Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(a) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

#### PRIOR APPOINTMENTS OF CERTAIN PERSONNEL

Pub. L. 108-170, title III, §301(a)(2), Dec. 6, 2003, 117 Stat. 2055, provided that: “Personnel appointed to the

Veterans Health Administration before the date of the enactment of this Act [Dec. 6, 2003] who are in an occupational category of employees specified in paragraph (3) of section 7401 of title 38, United States Code, by reason of the amendment made by paragraph (1)(B) of this subsection [amending this section] shall, as of such date, be deemed to have been appointed to the Administration under such paragraph (3)."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7402, 7403, 7404, 7405, 7407, 7408, 7410, 7411, 7423, 7424, 7425, 7451, 7452, 7454, 7455, 7457, 7461, 7462, 7463, 7612, 7672 of this title; title 5 section 7511.

### § 7402. Qualifications of appointees

(a) To be eligible for appointment to the positions in the Administration covered by subsection (b), a person must have the applicable qualifications set forth in that subsection.

(b)(1) **PHYSICIAN.**—To be eligible to be appointed to a physician position, a person must—

(A) hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Secretary,

(B) have completed an internship satisfactory to the Secretary, and

(C) be licensed to practice medicine, surgery, or osteopathy in a State.

(2) **DENTIST.**—To be eligible to be appointed to a dentist position, a person must—

(A) hold the degree of doctor of dental surgery or dental medicine from a college or university approved by the Secretary, and

(B) be licensed to practice dentistry in a State.

(3) **NURSE.**—To be eligible to be appointed to a nurse position, a person must—

(A) have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, and

(B) be registered as a graduate nurse in a State.

(4) **DIRECTOR OF A HOSPITAL, DOMICILIARY, CENTER, OR OUTPATIENT CLINIC.**—To be eligible to be appointed to a director position, a person must have such business and administrative experience and qualifications as the Secretary shall prescribe.

(5) **PODIATRIST.**—To be eligible to be appointed to a podiatrist position, a person must—

(A) hold the degree of doctor of podiatric medicine, or its equivalent, from a school of podiatric medicine approved by the Secretary, and

(B) be licensed to practice podiatry in a State.

(6) **OPTOMETRIST.**—To be eligible to be appointed to an optometrist position, a person must—

(A) hold the degree of doctor of optometry, or its equivalent, from a school of optometry approved by the Secretary, and

(B) be licensed to practice optometry in a State.

(7) **PHARMACIST.**—To be eligible to be appointed to a pharmacist position, a person must—

(A) hold the degree of bachelor of science in pharmacy, or its equivalent, from a school of pharmacy, approved by the Secretary, and

(B) be registered as a pharmacist in a State.

(8) **PSYCHOLOGIST.**—To be eligible to be appointed to a psychologist position, a person must—

(A) hold a doctoral degree in psychology from a college or university approved by the Secretary,

(B) have completed study for such degree in a specialty area of psychology and an internship which are satisfactory to the Secretary, and

(C) be licensed or certified as a psychologist in a State, except that the Secretary may waive the requirement of licensure or certification for an individual psychologist for a period not to exceed two years on the condition that that psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified.

(9) **SOCIAL WORKER.**—To be eligible to be appointed to a social worker position, a person must—

(A) hold a master's degree in social work from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice social work in a State, except that the Secretary may waive the requirement of licensure or certification for an individual social worker for a reasonable period of time recommended by the Under Secretary for Health.

(10) **CHIROPRACTOR.**—To be eligible to be appointed to a chiropractor position, a person must—

(A) hold the degree of doctor of chiropractic, or its equivalent, from a college of chiropractic approved by the Secretary; and

(B) be licensed to practice chiropractic in a State.

(11) **OTHER HEALTH-CARE POSITIONS.**—To be appointed as a physician assistant, expanded-function dental auxiliary, certified or registered respiratory therapist, licensed physical therapist, licensed practical or vocational nurse, occupational therapist, dietitian, microbiologist, chemist, biostatistician, medical technologist, dental technologist, or other position, a person must have such medical, dental, scientific, or technical qualifications as the Secretary shall prescribe.

(c) Except as provided in section 7407(a) of this title, a person may not be appointed in the Administration to a position listed in section 7401(1) of this title unless the person is a citizen of the United States.

(d) A person may not be appointed under section 7401(1) of this title to serve in the Administration in any direct patient-care capacity unless the Under Secretary for Health determines that the person possesses such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable the person to carry out the person's health-care responsibilities satisfactorily. Any determination by the Under Secretary for Health under this subsection shall be in accordance with regulations which the Secretary shall prescribe.

(e) A person may not serve as Chief of Staff of a Department health-care facility if the person is not serving on a full-time basis.

(f) A person may not be employed in a position under subsection (b) (other than under paragraph (4) of that subsection) if—

(1) the person is or has been licensed, registered, or certified (as applicable to such position) in more than one State; and

(2) either—

(A) any of those States has terminated such license, registration, or certification for cause; or

(B) the person has voluntarily relinquished such license, registration, or certification in any of those States after being notified in writing by that State of potential termination for cause.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102-86, title III, § 305(a), Aug. 14, 1991, 105 Stat. 417; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-117, title II, § 209, Nov. 30, 1999, 113 Stat. 1569; Pub. L. 106-419, title II, § 205, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108-170, title III, § 302(b), Dec. 6, 2003, 117 Stat. 2058.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4105 and 4108(b) of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Subsec. (b)(10), (11). Pub. L. 108-170 added par. (10) and redesignated former par. (10) as (11).

2000—Subsec. (b)(9). Pub. L. 106-419 substituted “a person must—” and subpars. (A) and (B) for “a person must hold a master’s degree in social work from a college or university approved by the Secretary and satisfy the social worker licensure, certification, or registration requirements, if any, of the State in which the social worker is to be employed, except that the Secretary may waive the licensure, certification, or registration requirement of this paragraph for an individual social worker for a reasonable period, not to exceed 3 years, in order for the social worker to take any actions necessary to satisfy the licensure, certification, or registration requirements of such State.”

1999—Subsec. (f). Pub. L. 106-117 added subsec. (f).

1992—Subsec. (d). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

1991—Subsec. (b)(9), (10). Pub. L. 102-86 added par. (9) and redesignated former par. (9) as (10).

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(b) of Pub. L. 102-86 provided that: “The amendment made by subsection (a) [amending this section] does not apply to any person employed as a social worker by the Department of Veterans Affairs on or before the date of the enactment of this Act [Aug. 14, 1991].”

#### REQUIREMENTS RESPECTING BASIC PROFICIENCY IN SPOKEN AND WRITTEN ENGLISH OF APPOINTEES AFTER NOVEMBER 23, 1977

Section 4(a)(3) of Pub. L. 95-201 provided that: “Notwithstanding any other provision of law, with respect

to persons other than those described in subsection (c) of section 4105 and subsection (f) of section 4114 of title 38, United States Code [former sections 4105(c) and 4114(f) of this title, see subsec. (d) of this section and section 7407(d) of this title] (as added by paragraphs (1) and (2) of this subsection), who are appointed after the date of enactment of this Act [Nov. 23, 1977] in the Department of Medicine and Surgery in the Veterans’ Administration [now Veterans Health Administration of the Department of Veterans Affairs] in any direct patient-care capacity, and with respect to persons described in such subsections who are appointed after such enactment date and prior to January 1, 1978, the Administrator of Veterans’ Affairs [now Secretary of Veterans Affairs], upon the recommendation of the Chief Medical Director [now Under Secretary for Health], shall take appropriate steps to provide reasonable assurance that such persons possess such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable such persons to carry out their health-care responsibilities satisfactorily.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7604 of this title.

### § 7403. Period of appointments; promotions

(a)(1) Appointments under this chapter of health-care professionals to whom this section applies may be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Secretary, without regard to civil-service requirements.

(2) This section applies to the following persons appointed under this chapter:

- (A) Physicians.
- (B) Dentists.
- (C) Podiatrists.
- (D) Optometrists.
- (E) Nurses.
- (F) Physician assistants.
- (G) Expanded-function dental auxiliaries.
- (H) Chiropractors.

(b)(1) Appointments described in subsection (a) shall be for a probationary period of two years.

(2) The record of each person serving under such an appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Secretary. If such a board finds that such person is not fully qualified and satisfactory, such person shall be separated from the service.

(c) Promotions of persons to whom this section applies shall be made only after examination given in accordance with regulations prescribed by the Secretary. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.

(d) In determining eligibility for reinstatement in the Federal civil service of persons appointed to positions in the Administration under this chapter who at the time of appointment have a civil-service status, and whose employment in the Administration is terminated, the period of service performed in the Administration shall be included in computing the period of service under applicable civil-service rules and regulations.

(e) In accordance with regulations prescribed by the Secretary, the grade and annual rate of basic pay of a person to whom this section applies whose level of assignment is changed from a level of assignment in which the grade level is based on both the nature of the assignment and personal qualifications may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(f)(1) Upon the recommendation of the Under Secretary for Health, the Secretary may—

(A) use the authority in subsection (a) to establish the qualifications for and (subject to paragraph (2)) to appoint individuals to positions listed in section 7401(3) of this title; and

(B) use the authority provided in subsection (c) for the promotion and advancement of Department employees serving in such positions.

(2) In using such authority to appoint individuals to such positions, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(3) Notwithstanding any other provision of this title or other law, all matters relating to adverse actions, reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees, disciplinary actions, and grievance procedures involving individuals appointed to such positions, whether appointed under this section or section 7405(a)(1)(B) of this title (including similar actions and procedures involving an employee in a probationary status), shall be resolved under the provisions of title 5 as though such individuals had been appointed under that title.

(g)(1) The Secretary may appoint in the competitive civil service without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title) an individual who—

(A) has a recognized degree or certificate from an accredited institution in a health-care profession or occupation; and

(B) has successfully completed a clinical education program affiliated with the Department.

(2) In using the authority provided by this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(h)(1) If the Secretary uses the authority provided in subsection (c) for the promotion and advancement of an occupational category of employees described in section 7401(3) of this title, as authorized by subsection (f)(1)(B), the Secretary shall do so through one or more systems prescribed by the Secretary. Each such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees.

(2)(A) Before prescribing a system of promotion and advancement of an occupational category of employees under paragraph (1), the Secretary shall provide to exclusive employee representatives of such occupational category of employees a written description of the proposed system.

(B) Not later than 30 days after receipt of the description of a proposed system under subparagraph (A), exclusive employee representatives may submit to the Secretary the recommendations, if any, of such exclusive employee representatives with respect to the proposed system.

(C) The Secretary shall give full and fair consideration to any recommendations received under subparagraph (B) in deciding whether and how to proceed with a proposed system.

(3) The Secretary shall implement immediately any part of a system of promotion and advancement under paragraph (1) that is proposed under paragraph (2) for which the Secretary receives no recommendations from exclusive employee representatives under paragraph (2).

(4) If the Secretary receives recommendations under paragraph (2) from exclusive employee representatives on any part of a proposed system of promotion and advancement under that paragraph, the Secretary shall determine whether or not to accept the recommendations, either in whole or in part. If the Secretary determines not to accept all or part of the recommendations, the Secretary shall—

(A) notify the congressional veterans' affairs committees of the recommendations and of the portion of the recommendations that the Secretary has determined not to accept;

(B) meet and confer with such exclusive employee representatives, for a period not less than 30 days, for purposes of attempting to reach an agreement on whether and how to proceed with the portion of the recommendations that the Secretary has determined not to accept;

(C) at the election of the Secretary, or of a majority of such exclusive employee representatives who are participating in negotiations on such matter, employ the services of the Federal Mediation and Conciliation Service during the period referred to in subparagraph (B) for purposes of reaching such agreement; and

(D) if the Secretary determines that activities under subparagraph (B), (C), or both are unsuccessful at reaching such agreement and determines (in the sole and unreviewable discretion of the Secretary) that further meeting and conferral under subparagraph (B), mediation under subparagraph (C), or both are unlikely to reach such agreement—

(i) notify the congressional veterans' affairs committees of such determinations, identify for such committees the portions of the recommendations that the Secretary has determined not to accept, and provide such committees an explanation and justification for determining to implement the part of the system subject to such portions of the recommendations without regard to such portions of the recommendations; and

(ii) commencing not earlier than 30 days after notice under clause (i), implement the part of the system subject to the recommendations that the Secretary has determined not to accept without regard to those recommendations.

(5) If the Secretary and exclusive employee representatives reach an agreement under para-

graph (4) providing for the resolution of a disagreement on one or more portions of the recommendations that the Secretary had determined not to accept under that paragraph, the Secretary shall immediately implement such resolution.

(6) In implementing a system of promotion and advancement under this subsection, the Secretary shall—

(A) develop and implement mechanisms to permit exclusive employee representatives to participate in the periodic review and evaluation of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

(B) provide exclusive employee representatives appropriate access to information to ensure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include—

(i) an explanation and justification of the modification; and

(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

(9) In this subsection, the term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 224; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, §§ 301(b), 302(c), Dec. 6, 2003, 117 Stat. 2055, 2058.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4106 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Subsec. (a)(2)(H). Pub. L. 108-170, § 302(c), added subpar. (H).

Subsec. (f)(3). Pub. L. 108-170, § 301(b)(1), inserted "reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees," after "adverse actions," ", whether appointed under this section or section 7405(a)(1)(B) of this title" after "such positions", and comma after "status)".

Subsec. (h). Pub. L. 108-170, § 301(b)(2), added subsec. (h).

1992—Subsec. (f)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(c) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7405 of this title.

### § 7404. Grades and pay scales

(a) The annual rates or ranges of rates of basic pay for positions provided in section 7306 of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law.

(b)(1) The grades for positions provided for in paragraph (1) of section 7401 of this title shall be as follows. The annual ranges of rates of basic pay for those grades shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law:

#### PHYSICIAN AND DENTIST SCHEDULE

Director grade.  
Executive grade.  
Chief grade.  
Senior grade.  
Intermediate grade.  
Full grade.  
Associate grade.

#### NURSE SCHEDULE

Nurse V.  
Nurse IV.  
Nurse III.  
Nurse II.  
Nurse I.

#### CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE

Chief grade.  
Senior grade.  
Intermediate grade.  
Full grade.  
Associate grade.

(2) A person may not hold the director grade in the Physician and Dentist Schedule unless the person is serving as a director of a hospital, domiciliary, center, or outpatient clinic (independent), or comparable position. A person may not hold the executive grade in that Schedule unless the person holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position.

(c) Notwithstanding the provisions of section 7425(a) of this title, a person appointed under section 7306 of this title who is not eligible for special pay under subchapter III shall be deemed to be a career appointee for the purposes of sections 4507 and 5384 of title 5.

(d) Except as provided under subchapter III and in section 7457 of this title, pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5315 or 5316 of title 5 for positions in the Executive Schedule, as follows:

(1) Level IV for the Deputy Under Secretary for Health.

(2) Level V for all other positions for which such basic pay is paid under this section.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 225; amended Pub. L. 102-405, title II, § 206, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title III, § 301(a), Nov. 4, 1992, 106 Stat. 4951; Pub. L. 108-170, title III, § 302(d), Dec. 6, 2003, 117 Stat. 2058.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(a)–(d) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-170 substituted “CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE” for “CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE” as third center heading in table.

1992—Subsec. (b)(1). Pub. L. 102-585 inserted items relating to Nurse V through I under heading “NURSE SCHEDULE” and struck out former items under that heading, “Director grade”, “Senior grade”, “Intermediate grade”, and “Entry grade”.

Subsec. (b)(2). Pub. L. 102-405, § 206, inserted “, or comparable position” before period at end of first sentence.

Subsec. (d)(1). Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director”.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 308 of Pub. L. 102-585 provided that: “The amendments made by sections 301, 302, 303, and 304 [amending this section and sections 7451 and 7452 of this title] shall take effect with respect to the first pay period beginning on or after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 4, 1992].”

#### ADJUSTMENT OF PAY RATES EFFECTIVE FOR PAY PERIODS BEGINNING ON OR AFTER JANUARY 1, 2004

Ex. Ord. No. 13332, Mar. 3, 2004, 69 F.R. 10891, set out as a note under section 5332 of Title 5, Government Organization and Employees, provided for an adjustment of the pay rates under this section effective on the first day of the first applicable pay period beginning on or after Jan. 1, 2004. See Schedule set out below:

#### SCHEDULE 3

##### *Veterans Health Administration Schedules, Department of Veterans Affairs*

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)<sup>1</sup>

Deputy Under Secretary for Health ..... <sup>2</sup>\$148,495

#### SCHEDULE 3—Continued

##### *Veterans Health Administration Schedules, Department of Veterans Affairs*

Associate Deputy Under Secretary for Health ..		<sup>3</sup> 142,230
Assistant Under Secretaries for Health .....		<sup>3</sup> 138,037
	Minimum	Maximum
Medical Directors .....	\$117,774	<sup>3</sup> \$133,481
Service Directors .....	102,549	127,359
Director, National Center for Preventive Health .....	87,439	127,359
Physician and Dentist Schedule		
Director Grade .....	\$102,549	\$127,359
Executive Grade .....	94,694	120,684
Chief Grade .....	87,439	113,674
Senior Grade .....	74,335	96,637
Intermediate Grade .....	62,905	81,778
Full Grade .....	52,899	68,766
Associate Grade .....	44,136	57,375
Clinical Podiatrist and Optometrist Schedule		
Chief Grade .....	\$87,439	\$113,674
Senior Grade .....	74,335	96,637
Intermediate Grade .....	62,905	81,778
Full Grade .....	52,899	68,766
Associate Grade .....	44,136	57,375
Physician Assistant and Expanded-Function Dental Auxiliary Schedule <sup>4</sup>		
Director Grade .....	\$87,439	\$113,674
Assistant Director Grade .....	74,335	96,637
Chief Grade .....	62,905	81,778
Senior Grade .....	52,899	68,766
Intermediate Grade .....	44,136	57,375
Full Grade .....	36,478	47,422
Associate Grade .....	31,390	40,804
Junior Grade .....	26,836	34,891

<sup>1</sup>This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

<sup>2</sup>Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is \$136,900.

<sup>3</sup>Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is \$128,200.

<sup>4</sup>Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) [former section 4107(b) of Title 38, Veterans' Benefits] as in effect on August 14, 1990, with subsequent adjustments.

#### EXECUTIVE ORDER NO. 11413

Ex. Ord. No. 11413, June 11, 1968, 33 F.R. 8641, which provided for adjustment of pay rates effective July 1, 1968, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

#### EXECUTIVE ORDER NO. 11474

Ex. Ord. No. 11474, June 16, 1969, 34 F.R. 9605, which provided for adjustment of pay rates effective July 1, 1969, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out as a note under section 5332 of Title 5.

#### EXECUTIVE ORDER NO. 11524

Ex. Ord. No. 11524, Apr. 15, 1970, 35 F.R. 6247, which provided for adjustment of pay rates effective first pay period on or after Dec. 27, 1969, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out as a note under section 5332 of Title 5.

#### EXECUTIVE ORDER NO. 11576

Ex. Ord. No. 11576, Jan. 8, 1971, 36 F.R. 347, which provided for adjustment of pay rates effective Jan. 1, 1971, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out as a note under section 5332 of Title 5.

#### EXECUTIVE ORDER NO. 11637

Ex. Ord. No. 11637, Dec. 22, 1971, 36 F.R. 24911, which provided for adjustment of pay rates effective Jan. 1, 1972, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 11691

Ex. Ord. No. 11691, Dec. 15, 1972, 37 F.R. 27607, as amended by Ex. Ord. No. 11777, Apr. 12, 1974, 39 F.R. 13519, which provided for adjustment of pay rates effective Oct. 1, 1972, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 11739

Ex. Ord. No. 11739, Oct. 3, 1973, 38 F.R. 27581, which provided for adjustment of pay rates effective Oct. 1, 1973, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 11811

Ex. Ord. No. 11811, Oct. 7, 1975, 39 F.R. 3602, which provided for adjustment of pay rates effective Oct. 1, 1974, was superseded by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 11883

Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, which provided for adjustment of pay rates effective Oct. 1, 1975, was superseded by Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 11941

Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43899, as amended by Ex. Ord. No. 11943, Oct. 25, 1976, 41 F.R. 47213, which provided for adjustment of pay rates effective Oct. 1, 1976, was superseded by Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12010

Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, which provided for adjustment of pay rates effective Oct. 1, 1977, was superseded by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12087

Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, which provided for adjustment of pay rates effective Oct. 1, 1978, was superseded by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12165

Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 44 F.R. 16443, which provided for adjustment of pay rates effective Oct. 1, 1979, was superseded by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12248

Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, which provided for adjustment of pay rates effective Oct. 1, 1980, was superseded by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12330

Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, which provided for adjustment of pay rates effective Oct. 1, 1981, was superseded by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12387

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983,

49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12438

Ex. Ord. No. 12438, Aug. 23, 1983, 48 F.R. 39205, which related to review of increases in rates of basic pay for employees of the Veterans' Administration, was revoked by Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, set out as a note under section 7455 of this title.

## EXECUTIVE ORDER No. 12456

Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12496

Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, which provided for adjustment of pay rates effective Jan. 1, 1985, was superseded by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12578

Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, which provided for adjustment of pay rates effective Jan. 1, 1987, was superseded by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12622

Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, which provided for adjustment of pay rates effective Jan. 1, 1988, was superseded by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12663

Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, which provided for adjustment of pay rates effective Jan. 1, 1989, was superseded by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12698

Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, which provided for adjustment of pay rates effective Jan. 1, 1990, and Jan. 31, 1990, was superseded by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12736

Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, which provided for adjustment of pay rates effective Jan. 1, 1991, was superseded by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12786

Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, which provided for adjustment of pay rates effective Jan. 1, 1992, was superseded by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12826

Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, which provided for adjustment of pay rates effective Jan. 1, 1993, was superseded by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.



## EXECUTIVE ORDER No. 12944

Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, which provided for adjustment of pay rates effective Jan. 1, 1995, was superseded by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 12984

Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, which provided for adjustment of pay rates effective Jan. 1, 1996, was superseded by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 13033

Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, which provided for adjustment of pay rates effective Jan. 1, 1997, was superseded by Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 13071

Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, which provided for adjustment of pay rates effective Jan. 1, 1998, was superseded by Ex. Ord. No. 13106, Dec. 7, 1998, 63 F.R. 68151, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 13106

Ex. Ord. No. 13106, Dec. 7, 1998, 63 F.R. 68151, which provided for adjustment of pay rates effective Jan. 1, 1999, was substantially superseded by Ex. Ord. No. 13144, Dec. 21, 1999, 64 F.R. 72237, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 13144

Ex. Ord. No. 13144, Dec. 21, 1999, 64 F.R. 72237, which provided for adjustment of pay rates effective Jan. 1, 2000, was superseded by Ex. Ord. No. 13182, Dec. 23, 2000, 65 F.R. 82879, 66 F.R. 10057, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 13182

Ex. Ord. No. 13182, Dec. 23, 2000, 65 F.R. 82879, 66 F.R. 10057, which provided for adjustment of pay rates effective Jan. 1, 2001, was superseded by Ex. Ord. No. 13249, Dec. 28, 2001, 67 F.R. 639, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 13249

Ex. Ord. No. 13249, Dec. 28, 2001, 67 F.R. 639, which provided for adjustment of pay rates effective Jan. 1, 2002, was superseded by Ex. Ord. No. 13282, Dec. 31, 2002, 68 F.R. 1133, formerly set out as a note under section 5332 of Title 5.

## EXECUTIVE ORDER No. 13282

Ex. Ord. No. 13282, Dec. 31, 2002, 68 F.R. 1133, which provided for adjustment of pay rates effective Jan. 1, 2003, was superseded by Ex. Ord. No. 13322, Dec. 30, 2003, 69 F.R. 231.

## EXECUTIVE ORDER No. 13322

Ex. Ord. No. 13322, Dec. 30, 2003, 69 F.R. 231, which provided for adjustment of pay rates effective Jan. 1, 2004, was superseded by Ex. Ord. No. 13332, Mar. 3, 2004, 69 F.R. 10891, set out as a note under section 5332 of Title 5.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7324, 7451, 7455 of this title.

### § 7405. Temporary full-time appointments, part-time appointments, and without-compensation appointments

(a) The Secretary, upon the recommendation of the Under Secretary for Health, may employ,

without regard to civil service or classification laws, rules, or regulations, personnel as follows:

(1) On a temporary full-time basis, part-time basis, or without compensation basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Librarians.

(D) Other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs).

(2) On a fee basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Other professional and technical personnel.

(b) Personnel employed under subsection (a)—

(1) shall be in addition to personnel described in section 7306, paragraphs (1) and (3) of section 7401, and section 7408 of this title; and

(2) shall be paid such rates of pay as the Secretary may prescribe.

(c)(1) Temporary full-time appointments under this section of persons in positions listed in paragraphs (1) and (3) of section 7401 of this title may be for a period in excess of 90 days only if the Under Secretary for Health finds that circumstances render it impracticable to obtain the necessary services through appointments under that section.

(2) A temporary full-time appointment may not be made for a period in excess of two years in the case of a person who—

(A) has successfully completed—

(i) a full course of nursing in a recognized school of nursing, approved by the Secretary; or

(ii) a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title, or as a physician assistant, in a recognized education or training institution approved by the Secretary; and

(B) is pending registration or licensure in a State or certification by a national board recognized by the Secretary.

(3)(A) Temporary full-time appointments of persons in positions referred to in subsection (a)(1)(D) shall not exceed three years.

(B) Temporary full-time appointments under this paragraph may be renewed for one or more additional periods not in excess of three years each.

(4) Temporary full-time appointments of other personnel may not be for a period in excess of one year except as authorized in subsection (f).

(d) A part-time appointment may not be for a period of more than one year, except for appointments of persons specified in subsection (a)(1)(A) and interns, residents, and other trainees in medical support programs and except as authorized in subsection (f).

(e) A student who has a temporary appointment under this section and who is pursuing a full course of nursing in a recognized school of nursing approved by the Secretary, or who is pursuing a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, may be reappointed for a period not to exceed the duration of the student's academic program.

(f) During any period during which the Secretary is exercising the authority provided in subsections (a) and (f)(1) of section 7403 of this title in connection with the appointment, under paragraph (3) of section 7401 of this title, of personnel in a category of personnel described in such paragraph—

(1) the Secretary may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Under Secretary for Health finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 7401 of this title; and

(2) part-time appointments of personnel in such category may be for periods of more than one year.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 226; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-419, title II, § 204, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108-170, title III, § 301(c), Dec. 6, 2003, 117 Stat. 2057.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Subsec. (a)(1)(B), (C). Pub. L. 108-170, § 301(c)(1)(A), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

“(B) Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.

“(C) Dietitians, social workers, and librarians.”

Subsec. (a)(2)(B). Pub. L. 108-170, § 301(c)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.”

Subsec. (c)(1). Pub. L. 108-170, § 301(c)(2), substituted “paragraphs (1) and (3) of section 7401” for “section 7401(1)”.

2000—Subsec. (c)(2). Pub. L. 106-419, § 204(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, or who have successfully completed a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, and who are pending registration or licensure in a State, or certification by a national board recognized by the Secretary, shall not exceed two years.”

Subsec. (c)(3), (4). Pub. L. 106-419, § 204(b), added par. (3) and redesignated former par. (3) as (4).

1992—Subsecs. (a), (c)(1), (f)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7403, 7407, 7408, 7424, 7425 of this title; title 5 section 5102.

### § 7406. Residencies and internships

(a)(1) The Secretary may establish residencies and internships. The Secretary may appoint qualified persons to such positions without regard to civil service or classification laws, rules, or regulations.

(2) For the purposes of this section:

(A) The term “internship” includes the equivalency of an internship as determined in accordance with regulations which the Secretary shall prescribe.

(B) The term “intern” means a person serving an internship.

(b) The Secretary may prescribe the conditions of employment of persons appointed under this section, including necessary training, and the customary amount and terms of pay for such positions during the period of such employment and training. The amount and terms of such pay may be established retroactively based on changes in such customary amount and terms.

(c)(1) In order to carry out more efficiently the provisions of subsection (a)(1), the Secretary may contract with one or more hospitals, medical schools, or medical installations having hospital facilities and participating with the Department in the training of interns or residents to provide, by the designation of one such institution to serve as a central administrative agency, for the central administration—

(A) of stipend payments;

(B) provision of fringe benefits; and

(C) maintenance of records for such interns and residents.

(2) The Secretary may pay to such designated agency, without regard to any other law or regulation governing the expenditure of Government moneys either in advance or in arrears, an amount to cover the cost for the period such intern or resident serves in a Department facility furnishing hospital care or medical services of—

(A) stipends fixed by the Secretary pursuant to paragraph (1);

(B) hospitalization, medical care, and life insurance and any other employee benefits as are agreed upon by the participating institutions for the period that such intern or resident serves in a Department facility furnishing hospital care or medical services;

(C) tax on employers pursuant to chapter 21 of the Internal Revenue Code of 1986, where applicable; and

(D) an amount to cover a pro rata share of the cost of expense of such central administrative agency.

(3)(A) Any amounts paid by the Secretary to such central administrative agency to cover the cost of hospitalization, medical care, or life insurance or other employee benefits shall be in lieu of any benefits of like nature to which such intern or resident may be entitled under the provisions of title 5, and the acceptance of sti-

pendents and employee benefits from the designated central administrative agency shall constitute a waiver by the recipient of any claim such recipient might have to any payment of stipends or employee benefits to which such recipient may be entitled under this title or title 5.

(B) Notwithstanding subparagraph (A), any period of service of any such intern or resident in a Department facility furnishing hospital care or medical services shall be deemed creditable service for the purposes of section 8332 of title 5.

(4) The agreement with such central administrative agency may further provide that the designated central administrative agency shall—

(A) make all appropriate deductions from the stipend of each intern and resident for local, State, and Federal taxes;

(B) maintain all records pertinent to such deductions and make proper deposits of such deductions; and

(C) maintain all records pertinent to the leave accrued by such intern and resident for the period during which such recipient serves in a participating facility, including a Department facility furnishing hospital care or medical services.

(5) Leave described in paragraph (4)(C) may be pooled, and the intern or resident may be afforded leave by the facility in which such person is serving at the time the leave is to be used to the extent of such person's total accumulated leave, whether or not earned at the facility in which such person is serving at the time the leave is to be afforded.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 227; amended Pub. L. 104-262, title III, § 345, Oct. 9, 1996, 110 Stat. 3208.)

#### REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (a)(1), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

Chapter 21 of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(C), is classified to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(b) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1996—Subsec. (c)(2), (3)(B). Pub. L. 104-262, § 345(1), substituted “Department facility furnishing hospital care or medical services” for “Department hospital” wherever appearing.

Subsec. (c)(4)(C). Pub. L. 104-262, § 345(2), substituted “participating facility” for “participating hospital”.

Pub. L. 104-262, § 345(1), substituted “Department facility furnishing hospital care or medical services” for “Department hospital”.

Subsec. (c)(5). Pub. L. 104-262, § 345(3), substituted “facility” for “hospital” in two places.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7408, 7423, 7425, 7461 of this title; title 5 section 5102.

### § 7407. Administrative provisions for section 7405 and 7406 appointments

(a) When the Under Secretary for Health determines that it is not possible to recruit qualified citizens for the necessary services, appointments under sections 7405 and 7406 of this title may be made without regard to the citizenship requirements of section 7402(c) of this title or of any other law prohibiting the employment of, or payment of compensation to, a person who is not a citizen of the United States.

(b)(1) Subject to paragraph (2), the Under Secretary for Health may waive for the purpose of the appointment of an individual under section 7405 or 7406 of this title the requirements set forth in section 7402(b) of this title—

(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

(B) that the licensure or certification of such an individual be in a State; and

(C) that a psychologist have completed an internship.

(2) The waivers authorized in paragraph (1) may be granted—

(A) in the case of clauses (A) and (C) of such paragraph, if the individual (i) will be employed to conduct research or serve in an academic position, and (ii) will have no responsibility for furnishing direct patient care services; and

(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.

(c) The program of training prescribed by the Secretary in order to qualify a person for the position of full-time physician assistant or expanded-function dental auxiliary shall be considered a full-time institutional program for purposes of chapter 34 of this title. The Secretary may consider training for such a position to be on a less than full-time basis for purposes of such chapter when the combined classroom (and other formal instruction) portion of the program and the on-the-job training portion of the program total less than 30 hours per week.

(d) A person may not be appointed under section 7405 or 7406 of this title to an occupational category described in section 7401(1) of this title or in section 7406 of this title unless the person meets the requirements established in section 7402(d) of this title and regulations prescribed under that section.

(e) In accordance with the provisions of section 7425(b) of this title, the provisions of chapter 34 of title 5 pertaining to part-time career employment shall not apply to part-time appointments under sections 7405 and 7406 of this title.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 228; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(c)–(g) of this title prior to the re-

peal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Subsecs. (a), (b)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7402 of this title.

### § 7408. Appointment of additional employees

(a) There shall be appointed by the Secretary under civil service laws, rules, and regulations, such additional employees, other than those provided in section 7306 and paragraphs (1) and (3) of section 7401 of this title and those specified in sections 7405 and 7406 of this title, as may be necessary to carry out the provisions of this chapter.

(b) The Secretary, after considering an individual's existing pay, higher or unique qualifications, or the special needs of the Department, may appoint the individual to a position in the Administration providing direct patient-care services or services incident to direct patient-services at a rate of pay above the minimum rate of the appropriate grade.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 103-446, title XII, § 1201(e)(21), Nov. 2, 1994, 108 Stat. 4686.)

#### REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a), are set forth in Title 5, Government Organization and Employees. See, particularly section 3301 et seq. of Title 5.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4111 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-446 substituted “civil service” for “civil-service”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7405, 7454 of this title.

### § 7409. Contracts for scarce medical specialist services

(a) The Secretary may enter into contracts with institutions and persons described in subsection (b) to provide scarce medical specialist services at Department facilities. Such services may include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel.

(b) Institutions and persons with whom the Secretary may enter into contracts under subsection (a) are the following:

(1) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing.

(2) Clinics.

(3) Any other group or individual capable of furnishing such scarce medical specialist services.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 108-170, title III, § 302(f), Dec. 6, 2003, 117 Stat. 2058.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4117 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Subsec. (a). Pub. L. 108-170 inserted “chiropractors,” after “optometrists,” in second sentence.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

### § 7410. Additional pay authorities

The Secretary may authorize the Under Secretary for Health to pay advance payments, recruitment or relocation bonuses, and retention allowances to the personnel described in paragraph (1) of section 7401 of this title, or interview expenses to candidates for appointment as such personnel, in the same manner, and subject to the same limitations, as in the case of the authority provided under sections 5524a, 5706b, 5753, and 5754 of title 5.

(Added Pub. L. 102-40, title I, § 103(a)[(1)], May 7, 1991, 105 Stat. 198; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### AMENDMENTS

1992—Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

### § 7411. Full-time board-certified physicians and dentists: reimbursement of continuing professional education expenses

The Secretary shall reimburse any full-time board-certified physician or dentist appointed under section 7401(1) of this title for expenses incurred, up to \$1,000 per year, for continuing professional education.

(Added Pub. L. 102-40, title I, § 103(a)[(1)], May 7, 1991, 105 Stat. 199.)

#### EFFECTIVE DATE

Section 103(b) of Pub. L. 102-40 provided that: “Section 7411 of title 38, United States Code, as added by subsection (a), shall apply with respect to expenses incurred for continuing professional education that is pursued after September 30, 1991.”

## SUBCHAPTER II—COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

### § 7421. Personnel administration: in general

(a) Notwithstanding any law, Executive order, or regulation, the Secretary shall prescribe by regulation the hours and conditions of employment and leaves of absence of employees appointed under any provision of this chapter in positions in the Veterans Health Administration listed in subsection (b).

(b) Subsection (a) refers to the following positions:

(1) Physicians.

- (2) Dentists.
- (3) Podiatrists.
- (4) Optometrists.
- (5) Registered nurses.
- (6) Physician assistants.
- (7) Expanded-duty dental auxiliaries.
- (8) Chiropractors.

(Added Pub. L. 102-40, title II, §202, May 7, 1991, 105 Stat. 200; amended Pub. L. 108-170, title III, §302(g), Dec. 6, 2003, 117 Stat. 2058.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Subsec. (b)(8). Pub. L. 108-170 added par. (8).

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

#### PRESERVATION OF EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS AND PENDING ACTIONS

Section 205 of Pub. L. 102-40 provided that:

“(a) EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS.—Any determination under chapter 71 of title 5, United States Code, of a collective bargaining unit within the Veterans Health Administration of the Department of Veterans Affairs, and any recognition under that chapter of an employee labor organization as the exclusive bargaining representative for employees in a collective bargaining unit of the Department of Veterans Affairs, that is in effect on the date of the enactment of this Act [May 7, 1991] shall not be affected by the amendments made by this Act [see Tables for classification] and shall continue in effect in accordance with the terms of such determination or regulation.

“(b) PENDING CASES.—With respect to cases pending on the date of the enactment of this Act [May 7, 1991], or those cases which are brought before the establishment of either an administrative grievance procedure pursuant to section 7463 of title 38, United States Code (as added by the amendments made by this title), or a negotiated grievance procedure established under a collective bargaining agreement, such cases shall proceed in the same manner as they would have if this Act [see Tables for classification] had not been enacted.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7422, 7423 of this title.

### § 7422. Collective bargaining

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).

(b) Such collective bargaining (and any grievance procedures provided under a collective bargaining agreement) in the case of employees described in section 7421(b) of this title may not cover, or have any applicability to, any matter or question concerning or arising out of (1) pro-

fessional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title.

(c) For purposes of this section, the term “professional conduct or competence” means any of the following:

- (1) Direct patient care.
- (2) Clinical competence.

(d) An issue of whether a matter or question concerns or arises out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title shall be decided by the Secretary and is not itself subject to collective bargaining and may not be reviewed by any other agency.

(e) A petition for judicial review or petition for enforcement under section 7123 of title 5 in any case involving employees described in section 7421(b) of this title or arising out of the applicability of chapter 71 of title 5 to employees in those positions, shall be taken only in the United States Court of Appeals for the District of Columbia Circuit.

(Added Pub. L. 102-40, title II, §202, May 7, 1991, 105 Stat. 200.)

### § 7423. Personnel administration: full-time employees

(a) The hours of employment in carrying out responsibilities under this title of any employee who is appointed in the Administration under any provision of this chapter on a full-time basis in a position listed in section 7421(b) of this title (other than an intern or resident appointed pursuant to section 7406 of this title) and who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period (as that term is used in section 5504 of title 5).

(b) A person covered by subsection (a) may not do any of the following:

(1) Teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title.

(2) Accept payment under any insurance or assistance program established under title XVIII or XIX of the Social Security Act or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title.

(3) Accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5.

(4) Request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, ex-

cept where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title.

(5) Perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both.

(c) In the case of any fund or account described in subsection (b)(5) that was established before September 1, 1973—

(1) the affiliated institution shall submit semiannually an accounting to the Secretary and to the Comptroller General of the United States with respect to such fund or account and shall maintain such fund or account subject to full public disclosure and audit by the Secretary and the Comptroller General for a period of three years or for such longer period as the Secretary shall prescribe, and

(2) no person in a position specified in paragraph (1)(B) may receive any cash from amounts deposited in such fund or account derived from services performed before that date.

(d) As used in this section:

(1) The term "affiliated institution" means a medical school or other institution of higher learning with which the Secretary has a contract or agreement as referred to in section 7313 of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any non-Department source in payment for carrying out any professional responsibilities.

(e)(1) The Secretary shall establish a leave transfer program for the benefit of health-care professionals in positions listed in section 7401(1) of this title. The Secretary may also establish a leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible—

(A) the leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any leave bank program established pursuant to paragraph (1) shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) Participation by a health-care professional in the leave transfer program established pursuant to paragraph (1), and in any leave bank program established pursuant to such paragraph, shall be voluntary. The Secretary may not require any health-care professional to participate in such a program.

(4)(A) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) to partici-

pate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5 or in any leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5, or both.

(B) Participation of such health-care professionals in a leave transfer program or a leave bank program pursuant to an agreement entered into under subparagraph (A) shall be subject to such requirements and conditions as may be prescribed in such agreement.

(5) The Secretary is not required to establish a leave transfer program for any personnel permitted to participate in a leave transfer program pursuant to an agreement referred to in paragraph (4).

(f) The Secretary may purchase promotional items of nominal value for use in the recruitment of individuals for employment under this chapter. The Secretary shall prescribe guidelines for the administration of the preceding sentence.

(Added and amended Pub. L. 102-40, title II, § 202, title IV, § 401(b)(3)(A), May 7, 1991, 105 Stat. 201, 230; Pub. L. 102-405, title II, § 203, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 104-262, title III, § 347, Oct. 9, 1996, 110 Stat. 3208.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(a), (c), and (e) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1996—Subsec. (b). Pub. L. 104-262, § 347(a), redesignated pars. (2) to (6) as (1) to (5), respectively, and struck out former par. (1) which read as follows: "Assume responsibility for the medical care of any patient other than a patient admitted for treatment at a Department facility, except in those cases where the person, upon request and with the approval of the Under Secretary for Health, assumes such responsibilities to assist communities or medical practice groups to meet medical needs which would not otherwise be available for a period not to exceed 180 calendar days, which may be extended by the Under Secretary for Health for additional periods not to exceed 180 calendar days each."

Subsec. (c). Pub. L. 104-262, § 347(b), substituted "subsection (b)(5)" for "subsection (b)(6)" in introductory provisions.

1992—Subsec. (b)(1). Pub. L. 102-405, § 302(c)(1), substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

Subsec. (f). Pub. L. 102-405, § 203, added subsec. (f).

1991—Subsec. (e). Pub. L. 102-40, § 401(b)(3)(A), added subsec. (e).

#### ESTABLISHMENT OF LEAVE BANK PROGRAM

For provision authorizing the establishment of a leave bank program for health-care professional covered under subsec. (e) of former section 4108 of this title [now covered by subsec. (e) of this section] similar to the leave bank program for Federal civilian employees in reserves who were activated during Persian Gulf

War, see section 361 of Pub. L. 102-25, set out as a Leave Bank for Federal Civilian Employees in Reserves Who Were Activated During Persian Gulf War note under section 6361 of Title 5, Government Organization and Employees.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7616 of this title.

### § 7424. Travel expenses of certain employees

(a) The Secretary may pay the expenses (other than membership fees) of persons described in sections 7306 and 7401(1) of this title (including persons in positions described in section 7401(1) of this title who are appointed on a temporary full-time basis or a part-time basis under section 7405 of this title) who are detailed by the Under Secretary for Health to attend meetings of associations for the promotion of medical and related science.

(b)(1) The Secretary may prescribe regulations establishing conditions under which officers and employees of the Administration who are nationally recognized principal investigators in medical research may be permitted to accept payment, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel and such reasonable subsistence expenses as are approved by the Secretary pursuant to such regulations—

(A) in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Department; or

(B) in connection with acceptance of significant awards or with activity related thereto concerned with functions or activities of the Department.

(2) Any such payment may be retained by such officers and employees to cover the cost of such expenses or shall be deposited to the credit of the appropriation from which the cost of such expenses is paid, as may be provided in such regulations.

(Added Pub. L. 102-40, title IV, § 401(b)(3)(B), May 7, 1991, 105 Stat. 230; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4108(d) and 4113 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

### § 7425. Employees: laws not applicable

(a) Physicians, dentists, nurses, and other health-care professionals employed by the Administration and appointed under section 7306, 7401(1), 7405, or 7406 of this chapter are not subject to the following provisions of law:

(1) Section 413 of the Civil Service Reform Act of 1978.

(2) Subchapter II of chapter 31 of title 5.

(3) Subchapter VIII of chapter 33 of title 5.

(4) Subchapter V of chapter 35 of title 5.

(5) Subchapter II of chapter 43 of title 5.

(6) Section 4507 of title 5.

(7) Subchapter VIII of chapter 53 of title 5.

(8) Subchapter V of chapter 75 of title 5.

(b) Notwithstanding any other provision of law, no provision of title 5 or any other law pertaining to the civil service system which is inconsistent with any provision of section 7306 of this title or this chapter shall be considered to supersede, override, or otherwise modify such provision of that section or this chapter except to the extent that such provision of title 5 or of such other law specifically provides, by specific reference to a provision of this chapter, or such provision to be superseded, overridden, or otherwise modified.

(Added Pub. L. 102-40, title IV, § 401(b)(3)(B), May 7, 1991, 105 Stat. 231.)

#### REFERENCES IN TEXT

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (a)(1), is section 413 of Pub. L. 95-454, title IV, Oct. 13, 1978, 92 Stat. 1175, which is set out as a note under section 3133 of Title 5, Government Organization and Employees.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4101(e) and 4119 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7404, 7407 of this title.

### § 7426. Retirement rights

(a) Except as provided in subsection (b), persons appointed to the Administration shall be subject to the provisions of and entitled to benefits under subchapter III of chapter 83 of title 5 or subchapter II of chapter 84 of title 5, whichever is applicable.

(b)(1) In computing the annuity under subchapter III of chapter 83, or subchapter II of chapter 84, of title 5 of an individual who retires under such subchapter (other than under section 8337 or 8451 of such title) after December 31, 1981, and who served at any time on a less-than-full-time basis in a position in the Administration to which such individual was appointed under subchapter I—

(A) for the purpose of determining such individual's average pay, as defined by section 8331(4) or 8401(3) of title 5, whichever is applicable, the annual rate of basic pay for full-time service shall be deemed to be such individual's rate of basic pay; and

(B) the amount of such individual's annuity as computed under section 8339 or 8415 of title 5 (before application of any reduction required by subsection (i) of section 8339) shall be multiplied by the fraction equal to the ratio that that individual's total full-time equivalent service bears to that individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable.

(2) For the purposes of paragraph (1)(B), an individual's full-time equivalent service is the individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable, except that any period of service of such individual served on a less-than-full-time

basis shall be prorated based on the fraction such service bears to full-time service. For the purposes of the preceding sentence, full-time service shall be considered to be 80 hours of service per biweekly pay period.

(3) A survivor annuity computed under section 8341, or subchapter IV of chapter 84, of title 5 based on the service of an individual described in paragraph (1) shall be computed based upon such individual's annuity as determined in accordance with such paragraph.

(c) The provisions of subsection (b) shall not apply to the part-time service before April 7, 1986, of a registered nurse, physician assistant, or expanded-function dental auxiliary. In computing the annuity under the applicable provision of law specified in that subsection of an individual covered by the preceding sentence, the service described in that sentence shall be credited as full-time service.

(Added Pub. L. 102-40, title IV, § 401(b)(3)(B), May 7, 1991, 105 Stat. 231; amended Pub. L. 102-585, title V, § 522, Nov. 4, 1992, 106 Stat. 4959; Pub. L. 106-398, § 1 [div. A], title X, § 1087(g)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A-294; Pub. L. 107-135, title I, § 132, Jan. 23, 2002, 115 Stat. 2454.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4107(i) and 4109 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2002—Subsec. (c). Pub. L. 107-135 added subsec. (c).

2000—Subsec. (c). Pub. L. 106-398 struck out subsec. (c) which read as follows: "The Secretary may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to meet special or emergency employment needs which result from a severe shortage of well-qualified candidates in physician positions, and registered nurse positions, which otherwise cannot be readily met. The authority of the Secretary under the preceding sentence with respect to registered-nurse positions expires on December 31, 1994."

1992—Subsec. (c). Pub. L. 102-585 substituted "December 31, 1994" for "September 30, 1992".

### SUBCHAPTER III—SPECIAL PAY FOR PHYSICIANS AND DENTISTS

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7404, 7458 of this title.

### § 7431. Special pay: authority

(a) In order to recruit and retain highly qualified physicians and dentists in the Veterans Health Administration, the Secretary shall provide special pay under this subchapter. Such special pay shall be provided under regulations that the Secretary shall prescribe to carry out this subchapter. Before prescribing regulations under this subchapter, the Secretary shall receive the recommendations of the Under Secretary for Health with respect to those regulations.

(b) Special pay may be paid to a physician or dentist under this subchapter only upon the execution of, and for the duration of, a written agreement entered into by the physician or dentist in accordance with section 7432 of this title.

(c) A physician or dentist serving a period of obligated service pursuant to chapter 76 of this title is not eligible for special pay under this subchapter during the first three years of such obligated service, except that, at the discretion of the Secretary and upon the recommendation of the Under Secretary for Health, such a physician or dentist may be paid special pay for full-time status during those three years.

(d)(1) The Secretary may determine categories of positions applicable to either physicians or dentists, or both, in the Veterans Health Administration as to which there is no significant recruitment and retention problem. While any such determination is in effect, the Secretary may not enter into an agreement under this subchapter with a physician or dentist serving in a position covered by the determination. Before making a determination under this paragraph, the Secretary shall receive the recommendations of the Under Secretary for Health with respect to the determination.

(2) Not later than one year after making any such determination with respect to a category of positions, and each year thereafter that such determination remains in effect, the Secretary shall make a redetermination.

(3) Any determination under this subsection shall be in accordance with regulations prescribed to carry out this subchapter.

(e) If the Under Secretary for Health determines that payment of special pay to a physician or dentist who is employed on a less than half-time basis is the most cost-effective way available for providing needed medical or dental specialist services at a Department facility, the Under Secretary for Health may authorize the payment of special pay for factors other than for full-time status to that physician or dentist at a rate computed on the basis of the proportion that the part-time employment of the physician or dentist bears to full-time employment.

(f) Special pay may not be paid under this section to a physician or dentist who—

(1) is employed on less than a quarter-time basis or on an intermittent basis;

(2) occupies an internship or residency training position; or

(3) is a reemployed annuitant.

(g)(1) In the case of a physician or dentist who is employed in a position that is covered by a determination by the Secretary under subsection (d)(1) that the Administration does not have a significant recruitment or retention problem with respect to a particular category of positions and who on the day before the effective date of this subchapter was receiving special pay under an agreement entered into under section 4118 of this title (as in effect before such date), the Secretary may pay to that physician or dentist, in addition to basic pay, retention pay under this subsection.

(2) The annual rate of such retention pay for any individual may not exceed the rate which, when added to the rate of basic pay payable to that individual, is equal to the sum of the annual rate of basic pay and the annual rate of special pay paid to that physician or dentist pursuant to the final agreement with that individual under such section 4118.



(3) Such retention pay shall be treated for all purposes as special pay paid under subchapter III of chapter 74 of this title.

(4) Retention pay under this subsection shall be paid under such regulations as the Secretary may prescribe.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 188; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (g)(1), see section 104 of Pub. L. 102-40, set out as an Effective Date note below.

Section 4118 of this title, referred to in subsec. (g)(1), (2), was repealed by Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 210.

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Subsecs. (a), (c), (d)(1), (e). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

#### EFFECTIVE DATE

Section 104 of Pub. L. 102-40 provided that:

“(a) EFFECTIVE DATE.—Subchapter III of chapter 74 of title 38, United States Code, as added by section 102, shall take effect on the first day of the first pay period beginning after the earlier of—

“(1) July 1, 1991; or

“(2) the end of the 90-day period beginning on the date of the enactment of this Act [May 7, 1991].

“(b) TRANSITIONS PROVISIONS.—(1) In the case of an agreement entered into under section 4118 of title 38, United States Code [former section 4118 of this title], before the date of the enactment of this Act [May 7, 1991] that expires after the effective date specified in subsection (a), the Secretary of Veterans Affairs and the physician or dentist concerned may agree to terminate that agreement as of that effective date in order to permit a new agreement under subchapter III of chapter 74 of title 38, United States Code, as added by section 102, to take effect as of that effective date.

“(2) In the case of an agreement entered into under section 4118 of title 38, United States Code, before the date of the enactment of this Act that expires during the period beginning on the date of the enactment of this Act and ending on the effective date specified in subsection (a), an extension or renewal of that agreement may not extend beyond that effective date.

“(3) In the case of a physician or dentist who begins employment with the Department of Veterans Affairs during the period beginning on the date of the enactment of this Act and ending on the effective date specified in subsection (a) who is eligible for an agreement under section 4118 of title 38, United States Code, any such agreement may not extend beyond that effective date.

“(c) SAVINGS PROVISION.—Except as provided in subsection (b)(1), any agreement entered into under section 4118 of title 38, United States Code, before the effective date specified in subsection (a) shall remain in effect in accordance with its terms and shall be treated for all purposes in accordance with such section as in effect on the day before such effective date.

“(d) PROHIBITION OF RETROACTIVE AGREEMENTS.—An agreement entered into under subchapter III of chapter 74 of title 38, United States Code, as added by section 102, may not provide special pay with respect to a period before the effective date specified in subsection (a).”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7432, 7434, 7436 of this title.

#### § 7432. Special pay: written agreements

(a) An agreement entered into by a physician or dentist under this subchapter shall cover a period of one year of service in the Veterans Health Administration unless the physician or dentist agrees to an agreement for a longer period of service, not to exceed four years, as specified in the agreement. A physician or dentist who has previously entered into such an agreement is eligible to enter into a subsequent agreement unless the physician or dentist has failed to refund to the United States any amount which the physician or dentist is obligated to refund under any such previous agreement.

(b)(1) An agreement under this subchapter shall provide that, if the physician or dentist entering into the agreement voluntarily, or because of misconduct, fails to complete any of the years of service covered by the agreement (measured from the anniversary date of the agreement), the physician or dentist shall refund an amount of special pay received under the agreement for that year equal to—

(A) in the case of a failure during the first year of service under the agreement, 100 percent of the amount received for that year;

(B) in the case of a failure during the second year of service under the agreement, 75 percent of the amount received for that year;

(C) in the case of a failure during the third year of service under the agreement, 50 percent of the amount received for that year; and

(D) in the case of a failure during the fourth year of service under the agreement, 25 percent of the amount received for that year.

(2)(A) The Secretary may waive (in whole or in part) the requirement for a refund under paragraph (1) in any case if the Secretary determines (in accordance with regulations prescribed under section 7431(a) of this title) that the failure to complete such period of service is the result of circumstances beyond the control of the physician or dentist.

(B) The Secretary may suspend a special pay agreement entered into under this section in the case of a physician or dentist who, having entered into the special pay agreement, enters a residency training program. Any such suspension shall terminate when the physician or dentist completes, withdraws from, or is no longer a participant in the program. During the period of such a suspension, the physician or dentist is not subject to the provisions of paragraph (1).

(3) Any such agreement shall specify the terms under which the Department and the physician or dentist may elect to terminate the agreement.

(c)(1) If a proposed agreement under this subchapter will provide a total annual amount of special pay to be provided to a physician or dentist who has previously entered into an agreement under this subchapter (or under section 4118 of this title as in effect before the effective date of the Department of Veterans Affairs Physician and Dentist Recruitment and Retention

Act of 1991) that will exceed the previous annual amount of special pay provided for the physician or dentist by more than 50 percent (other than in the case of a physician or dentist employed in an executive position in the Central Office of the Department), or that will be less than the previous annual amount of special pay provided for the physician or dentist by more than 25 percent, the proposed agreement shall be promptly submitted to the Secretary. The proposed agreement shall not take effect if it is disapproved by the Secretary within 60 days after the date on which the physician or dentist entered into the proposed agreement.

(2) For purposes of paragraph (1), the previous annual amount of special pay provided for a physician or dentist is the total annual amount of special pay provided, or to be provided, to the physician or dentist for the most recent year covered by an agreement entered into by the physician or dentist under this subchapter or under section 4118 of this title. In the case of an agreement entered into under section 4118 of this title, incentive pay shall be treated as special pay for purposes of this paragraph.

(3) The Secretary shall adjust special pay as necessary for purposes of this subsection to reflect appropriately any change in the status of a physician or dentist (A) from full-time status to part-time status, (B) from part-time status to full-time status, or (C) from one proportion of time spent as a Department employee under part-time status employment to a different proportion.

(d)(1) If a proposed agreement under this subchapter (other than an agreement in the case of the Under Secretary for Health) will provide a total annual amount of special pay to be provided to a physician or dentist which, when added to the amount of basic pay of the physician or dentist, will be in excess of the amount payable for positions specified in section 5312 of title 5, the proposed agreement shall be promptly submitted for approval to the Secretary through the Under Secretary for Health. The agreement shall take effect at the end of the 60-day period beginning on the date on which the physician or dentist entered into the proposed agreement if it is neither approved nor disapproved within that 60-day period. If the agreement is approved within that period, the agreement shall take effect as of the date of the approval. A proposed agreement may be disapproved under this paragraph only if it is determined that the amounts of special pay proposed to be paid are not necessary to recruit or retain the physician or dentist.

(2) A proposed agreement under this subchapter with the Under Secretary for Health may provide for payment of special pay for which the Under Secretary for Health is eligible under this subchapter (other than that specified in section 7433(b)(4)(B) of this title) only to the extent specifically approved by the Secretary.

(3) The Secretary shall include in the annual report required by section 7440 of this title—

(A) a statement of the number of agreements entered into during the period covered by the report under which the total amount of special pay to be provided, when added to the amount of basic pay of the physician or dentist, will be

in excess of the amount payable for positions specified in section 5312 of title 5;

(B) a statement of the number of proposed agreements which during the period covered by the report were disapproved under this subsection; and

(C) a detailed explanation of the basis for disapproval of each such proposed agreement which was disapproved under this subsection.

(4) This subsection does not apply to any proposed agreement entered into after September 30, 1994.

(Added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 189; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104-262, title III, §346, Oct. 9, 1996, 110 Stat. 3208.)

#### REFERENCES IN TEXT

Section 4118 of this title, referred to in subsec. (c)(1), (2), was repealed by Pub. L. 102-40, title IV, §401(a)(3), May 7, 1991, 105 Stat. 210.

The effective date of the Department of Veterans Affairs Physician and Dentist Recruitment and Retention Act of 1991, referred to in subsec. (c)(1), probably means the effective date of title I of Pub. L. 102-40, which enacted this subchapter, and which is generally effective on first day of first pay period after July 1, 1991, subject to certain transition and savings provisions, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104-262 designated existing provisions as subpar. (A) and added subpar. (B).

1992—Subsec. (d)(1), (2). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7431 of this title.

### § 7433. Special pay: full-time physicians

(a) The Secretary shall provide special pay under this subchapter to eligible physicians employed on a full-time basis based upon the factors, and at the annual rates, specified in subsection (b).

(b) The special pay factors, and the annual rates, applicable to full-time physicians are as follows:

(1) For full-time status, \$9,000.

(2)(A) For length of service as a physician within the Veterans Health Administration—

Length of Service	Rate	
	Minimum	Maximum
2 years but less than 4 years .....	\$4,000	\$ 6,000
4 years but less than 8 years .....	6,000	12,000

Length of Service	Rate	
	Mini- mum	Maxi- mum
8 years but less than 12 years ....	12,000	18,000
12 years or more .....	12,000	25,000

(B) The Under Secretary for Health shall specify a uniform national rate for each range of years of service established by or under this paragraph. The Under Secretary for Health may, as to length of service in excess of 12 years, establish uniform national rates for such ranges of years of service as the Under Secretary for Health considers appropriate.

(3)(A) For service in a medical specialty with respect to which there are extraordinary difficulties (on a nationwide basis or on the basis of the needs of a specific medical facility) in the recruitment or retention of qualified physicians, an annual rate of not more than \$40,000.

(B) For service by a physician who serves only a portion of a year in a medical specialty for which special pay is paid under subparagraph (A), the annual rate shall be calculated on the basis of the proportion of time served in the specialty for which the special pay is paid.

(4)(A) For service in any of the following executive positions, an annual rate not to exceed the rate applicable to that position as follows:

Position	Rate	
	Mini- mum	Maxi- mum
Service Chief (or in a comparable position as determined by the Secretary) .....	\$4,500	\$15,000
Chief of Staff or in an Executive Grade .....	14,500	25,000
Director Grade .....	0	25,000

(B) For service in any of the following executive positions, the annual rate applicable to that position as follows:

Position	Rate
Deputy Service Director .....	\$20,000
Service Director .....	25,000
Deputy Assistant Under Secretary for Health .....	27,500
Assistant Under Secretary for Health .....	30,000
Associate Deputy Under Secretary for Health .....	35,000
Deputy Under Secretary for Health .....	40,000
Under Secretary for Health .....	45,000

(C) For service by a physician who serves only a portion of a year in an executive position listed in subparagraph (A) or (B) or who serves a portion of a year in such a position and also serves a portion of that year in another position or grade for which special pay is provided under this section, the annual rate shall be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

(5) For specialty certification or first board certification, \$2,000, and for subspecialty certification or secondary board certification, an additional \$500.

(6) For service in a specific geographic location with respect to which there are extraordinary difficulties in the recruitment or retention of qualified physicians in a specific category of physicians, an annual rate of not more than \$17,000.

(7)(A) For service by a physician with exceptional qualifications within a specialty, an annual rate of not more than \$15,000.

(B) Special pay under this paragraph may be paid to a physician only if the payment of such pay to that physician is approved by the Under Secretary for Health personally and on a case-by-case basis and only to the extent that the rate paid under this paragraph, when added to the total of the rates paid to that physician under paragraphs (1) through (6), does not exceed the total rate that may be paid under those paragraphs to a physician with the same length of service, specialty, and position as the physician concerned.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 191; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, § 1201(e)(22), Nov. 2, 1994, 108 Stat. 4686.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1994—Subsec. (b)(3)(A). Pub. L. 103-446 substituted “nationwide” for “nation-wide”.

1992—Subsec. (b)(2)(B), (4)(B), (7)(B). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7432, 7434, 7437 of this title.

### § 7434. Special pay: part-time physicians

(a) Subject to section 7431(e) of this title and subsection (b) of this section, special pay under this subchapter for physicians employed on a part-time basis shall be based on the special-pay factors and annual rates specified in section 7433 of this title.

(b) The annual rate of special pay paid to a physician employed on a part-time basis shall bear the same ratio to the annual rate that the physician would be paid under section 7433 (other than for full-time status) if the physician were employed on a full-time basis as the amount of part-time employment by the physician bears to full-time employment, except that such ratio may not exceed 3/4.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 192.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal

of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7437 of this title.

### § 7435. Special pay: full-time dentists

(a) The Secretary shall provide special pay under this subchapter to eligible dentists employed on a full-time basis based upon the factors, and at the annual rates, specified in subsection (b).

(b) The special pay factors, and the annual rates, applicable to full-time dentists are as follows:

(1) For full-time status, \$9,000.

(2)(A) For length of service as a dentist with in the Veterans Health Administration—

Length of Service	Rate	
	Minimum	Maximum
1 year but less than 2 years .....	\$1,000	\$2,000
2 years but less than 4 years .....	4,000	5,000
4 years but less than 8 years .....	5,000	8,000
8 years but less than 12 years ....	8,000	12,000
12 years but less than 20 years ...	12,000	15,000
20 years or more .....	15,000	18,000.

(B) The Under Secretary for Health shall specify a uniform national rate for each range of years of service established by or under this paragraph. The Under Secretary for Health may, as to length of service in excess of 12 years, establish uniform national rates for such ranges of years of service as the Under Secretary for Health considers appropriate.

(3)(A) For service in a dental specialty with respect to which there are extraordinary difficulties (on a nationwide basis or on the basis of the needs of a specific medical facility) in the recruitment or retention of qualified dentists, an annual rate of not more than \$30,000.

(B) For service by a dentist who serves only a portion of a year in a dental specialty for which special pay is paid under subparagraph (A), the annual rate shall be calculated on the basis of the proportion of time served in the specialty for which the special pay is paid.

(4)(A) For service in any of the following executive positions, an annual rate not to exceed the rate applicable to that position as follows:

Position	Rate	
	Minimum	Maximum
Chief of Staff or in an Executive Grade .....	\$14,500	\$25,000
Director Grade .....	0	25,000
Service Chief (or in a comparable position as determined by the Secretary) .....	4,500	15,000.

(B) For service in any of the following executive positions, the annual rate applicable to that position as follows:

Position	Rate
Deputy Service Director .....	\$20,000
Service Director .....	25,000
Deputy Assistant Under Secretary for Health .....	27,500
Assistant Under Secretary for Health (or in a comparable position as determined by the Secretary) .....	30,000.

(C) For service by a dentist who serves only a portion of a year in an executive position listed in subparagraph (A) or (B) or who serves a portion of a year in such a position and also serves a portion of that year in another position or grade for which special pay is provided under this section, the annual rate shall be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

(5) For specialty or first board certification, \$2,000 and for subspecialty or secondary board certification, an additional \$500.

(6) For service in a specific geographic location with respect to which there are extraordinary difficulties in the recruitment or retention of qualified dentists in a specific category of dentists, an annual rate not more than \$12,000.

(7)(A) For service by a dentist with exceptional qualifications within a specialty, an annual rate of not more than \$5,000.

(B) Special pay under this paragraph may be paid to a dentist only if the payment of such pay to that dentist is approved by the Under Secretary for Health personally and on a case-by-case basis and only to the extent that the rate paid under this paragraph, when added to the total of the rates paid to that dentist under paragraphs (1) through (6), does not exceed the total rate that may be paid under those paragraphs to a dentist with the same length of service, specialty, and position as the dentist concerned.

(8) For a dentist who has successfully completed a post-graduate year of hospital-based training in a program accredited by the American Dental Association, an annual rate of \$2,000 for each of the first two years of service after successful completion of that training.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 193; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, § 1201(e)(22), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 106-419, title II, § 202(a)-(f), Nov. 1, 2000, 114 Stat. 1840, 1841.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106-419, § 202(a), substituted “\$9,000” for “\$3,500”.

Subsec. (b)(2)(A). Pub. L. 106-419, § 202(b), amended table generally, inserting item relating to rates for service between 1 and 2 years, substituting items relating to rates for service between 12 and 20 years and rates for service of 20 years or more for item relating to rates for service of 12 years or more, and increasing rates in existing items.

Subsec. (b)(3)(A). Pub. L. 106-419, § 202(c), substituted “\$30,000” for “\$20,000”.

Subsec. (b)(4)(A), (B). Pub. L. 106-419, § 202(d), amended tables generally, increasing rates and moving items relating to Service Director and Deputy Service Director from subpar. (A) to (B).

Subsec. (b)(6). Pub. L. 106-419, § 202(e), substituted “\$12,000” for “\$5,000”.

Subsec. (b)(8). Pub. L. 106-419, § 202(f), added par. (8). 1994—Subsec. (b)(3)(A). Pub. L. 103-446 substituted “nationwide” for “nation-wide”.

1992—Subsec. (b)(2)(B), (4)(B), (7)(B). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-419, title II, § 202(h), Nov. 1, 2000, 114 Stat. 1841, provided that: “The amendments made by this section [amending this section and section 7438 of this title] shall apply with respect to agreements entered into by dentists under subchapter III of chapter 74 of title 38, United States Code, on or after the date of the enactment of this Act [Nov. 1, 2000].”

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### TRANSITION

Pub. L. 106-419, title II, § 202(i), Nov. 1, 2000, 114 Stat. 1841, provided that: “In the case of an agreement entered into by a dentist under subchapter III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act [Nov. 1, 2000] that expires after that date, the Secretary of Veterans Affairs and the dentist concerned may agree to terminate that agreement as of the date of the enactment of this Act in order to permit a new agreement in accordance with section 7435 of such title, as amended by this section, to take effect as of that date.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7436, 7437, 7438 of this title.

### § 7436. Special pay: part-time dentists

(a) Subject to section 7431(e) of this title and subsection (b) of this section, special pay under this subchapter for dentists employed on a part-time basis shall be based on the special-pay factors and annual rates specified in section 7435 of this title.

(b) The annual rate of special pay paid to a dentist employed on a part-time basis shall bear the same ratio to the annual rate that the dentist would be paid under section 7435 of this title (other than for full-time status) if the dentist were employed on a full-time basis as the amount of part-time employment by the dentist bears to full-time employment, except that such ratio may not exceed 3/4.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 194.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provi-

sions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7437 of this title.

### § 7437. Special pay: general provisions

(a) A physician who is provided special pay for service in an executive position under paragraph (4)(B) of section 7433(b) of this title may not also be provided scarce specialty special pay under paragraph (3) of that section. A dentist who is provided special pay for service in an executive position under paragraph (4) of section 7435(b) of this title for service as a Service Director, Deputy Service Director, Deputy Assistant Under Secretary for Health, or Assistant Under Secretary for Health may not also be provided scarce specialty special pay under paragraph (3) of that section.

(b) The following determinations under this subchapter shall be made under regulations prescribed under section 7431 of this title:

(1) A determination that there are extraordinary difficulties (on a nation-wide basis or on the basis of the needs of a specific medical facility) in the recruitment or retention of qualified physicians in a medical specialty or in the recruitment or retention of qualified dentists in a dental specialty.

(2) A determination of the rate of special pay to be paid to a physician or dentist for a factor of special pay for which the applicable rate is specified as a range of rates.

(3) A determination of whether there are extraordinary difficulties in a specific geographic location in the recruitment or retention of qualified physicians in a specific category of physicians or in the recruitment or retention of qualified dentists in a specific category of dentists.

(c) A determination for the purposes of this subchapter that there are extraordinary difficulties in the recruitment or retention of qualified physicians in a medical specialty, or in the recruitment or retention of qualified dentists in a dental specialty, on the basis of the needs of a specific medical facility may only be made upon the request of the director of that facility.

(d) A physician or dentist may not be provided scarce specialty pay under section 7433(b), 7434(b), 7435(b), or 7436(b) of this title (whichever is applicable) on the basis of the needs of a specific medical facility unless the Secretary also determines that geographic location pay under that section is insufficient to meet the needs of that facility for qualified physicians or dentists, as the case may be.

(e)(1) A physician or dentist shall be paid special pay under this subchapter at a rate not less than the rate of special pay the physician or dentist was paid under section 4118 of this title as of the day before the effective date of this subchapter if the physician or dentist—

(A) is employed on a full-time basis in the Veterans Health Administration;

(B) was employed as a physician or dentist on a full-time basis in the Administration on the day before such effective date; and

(C) on such effective date was being paid for no special-pay factors other than primary,

full-time, length of service, and specialty or board certification.

(2) A physician or dentist shall be paid special pay under this subchapter at a rate not less than the rate of special pay the physician or dentist was paid under section 4118 of this title as of the day before the effective date of this subchapter if the physician or dentist—

(A) is employed on a part-time basis in the Veterans Health Administration;

(B) was employed as a physician or dentist on a part-time basis in the Administration on the day before such effective date; and

(C) on such effective date was being paid for no special-pay factors other than primary, full-time, length of service, and specialty or board certification.

(f) Any amount of special pay payable under this subchapter shall be paid in equal installments in accordance with regularly established pay periods.

(g) Except as otherwise expressly provided by law, special pay may not be provided to a physician or dentist in the Veterans Health Administration for any factor not specified in section 7433, 7434, 7435, or 7436, as applicable, of this title.

(h) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 194; amended Pub. L. 102-405, title II, § 204(a), title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984.)

#### REFERENCES IN TEXT

Section 4118 of this title, referred to in subsec. (e)(1), (2), was repealed by Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 210. See sections 7431 to 7440 of this title.

For the effective date of this subchapter, referred to in subsec. (e)(1), (2), see section 104 of Pub. L. 102-40, set out as an Effective Date note under section 7431 of this title.

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

Subsec. (e)(1)(C), (2)(C). Pub. L. 102-405, § 204(a), substituted “for no special-pay factors other than primary, full-time, length of service, and specialty or board certification” for “only for the special-pay factors of primary, full-time, and length of service” in par. (1)(C) and for “only for the special-pay factors of primary and length of service” in par. (2)(C).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 204(b) of Pub. L. 102-405 provided that: “The amendments made by subsection (a) [amending this section] shall apply as if enacted with the amendment made by section 102 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Public Law 102-40; 105 Stat. 187) [enacting this section].”

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### AVAILABILITY OF FUNDS

Section 204(c) of Pub. L. 102-405 provided that: “Expenses incurred for periods before October 1, 1991, by reason of the amendments made by subsection (a) [amending this section] may be charged to fiscal year 1992 appropriations available for the same purpose.”

#### § 7438. Special pay: coordination with other benefits laws

(a) Special pay paid under this subchapter shall be in addition to any other pay and allowances to which a physician or dentist is entitled.

(b)(1) A physician or dentist who has no section 4118 service and has completed not less than 15 years of service as a physician or dentist in the Veterans Health Administration shall be entitled to have special pay paid to the physician or dentist under this subchapter considered basic pay for the purposes of chapter 83 or 84 of title 5, as appropriate.

(2) A physician or dentist who has section 4118 service and has completed a total of not less than 15 years of service as a physician or dentist in the Veterans Health Administration shall be entitled to have special pay paid to the physician or dentist under this subchapter considered basic pay for the purposes of chapter 83 or 84, as appropriate, of title 5 as follows:

(A) In an amount equal to the amount that would have been so considered under section 4118 of this title on the day before the effective date of this section based on the rates of special pay the physician or dentist was entitled to receive under that section on the day before such effective date.

(B) With respect to any amount of special pay received under this subchapter in excess of the amount such physician or dentist was entitled to receive under section 4118 of this title on the day before the effective date of this section, in an amount equal to 25 percent of such excess amount for each two years that the physician or dentist has completed as a physician or dentist in the Veterans Health Administration after the effective date of this section.

(3) All special pay paid under this subchapter shall be included in average pay (as defined in sections 8331(4) or 8401(3) of title 5, as appropriate) for purposes of computing benefits paid under section 8337, 8341(d) or (e), 8442(b), 8443, or 8451 of such title.

(4) Special pay paid under section 4118 of this title, as in effect before the effective date of this section, to a physician or dentist who has section 4118 service shall be credited to the physician or dentist for the same purposes and in the same manner and to the same extent that such special pay was credited to the physician or dentist before such effective date.

(5) Notwithstanding paragraphs (1) and (2), a dentist employed as a dentist in the Veterans Health Administration on the date of the enactment of the Veterans Benefits and Health Care

Improvement Act of 2000 shall be entitled to have special pay paid to the dentist under section 7435(b)(2)(A) of this title (referred to as "tenure pay") considered basic pay for the purposes of chapter 83 or 84, as appropriate, of title 5 only as follows:

(A) In an amount equal to the amount that would have been so considered under such section on the day before such date based on the rates of special pay the dentist was entitled to receive under that section on the day before such date.

(B) With respect to any amount of special pay received under that section in excess of the amount such dentist was entitled to receive under such section on the day before such date, in an amount equal to 25 percent of such excess amount for each two years that the physician or dentist has completed as a physician or dentist in the Veterans Health Administration after such date.

(6) For purposes of this subsection:

(A) The term "physician or dentist who has no section 4118 service" means a physician or dentist employed as a physician or dentist in the Veterans Health Administration who has no previous service as a physician or dentist in the Administration (or its predecessor) before the effective date of this section.

(B) The term "physician or dentist who has section 4118 service" means a physician or dentist employed as a physician or dentist in the Veterans Health Administration who has previous service as a physician or dentist in the Administration (or its predecessor) before the effective date of this section.

(C) Service in any predecessor entity of the Veterans Health Administration shall be considered to be service in the Veterans Health Administration.

(c) Compensation paid as special pay under this subchapter or under an agreement entered into under section 4118 of this title (as in effect on the day before the effective date of the Department of Veterans Affairs Physician and Dentist Recruitment and Retention Act of 1991) shall be considered as annual pay for the purposes of chapter 87 of title 5, relating to life insurance for Federal employees.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 196; amended Pub. L. 106-419, title II, § 202(g), Nov. 1, 2000, 114 Stat. 1841.)

#### REFERENCES IN TEXT

Section 4118 of this title, referred to in subsecs. (b) and (c), was repealed by Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 210.

For the effective date of this subchapter, referred to in subsec. (b), see section 104(a) of Pub. L. 102-40, set out as an Effective Date note under section 7431 of this title.

The date of the enactment of the Veterans Benefits and Health Care Improvement Act of 2000, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 106-419, which was approved Nov. 1, 2000.

The effective date of the Department of Veterans Affairs Physician and Dentist Recruitment and Retention Act of 1991, referred to in subsec. (c), probably means the effective date of title I of Pub. L. 102-40, which enacted this subchapter, and which is generally effective on first day of first pay period after July 1, 1991, subject to certain transition and savings provisions, see section

104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2000—Subsec. (b)(5), (6). Pub. L. 106-419 added par. (5) and redesignated former par. (5) as (6).

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-419 applicable with respect to agreements entered into by dentists under this subchapter on or after Nov. 1, 2000, see section 202(h) of Pub. L. 106-419, set out as a note under section 7435 of this title.

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

### § 7439. Periodic review of pay of physicians and dentists; quadrennial report

(a) In order to make possible the recruitment and retention of a well-qualified work force of physicians and dentists capable of providing quality care for eligible veterans, it is the policy of Congress to ensure that the levels of total pay for physicians and dentists of the Veterans Health Administration are fixed at levels reasonably comparable—

(1) with the levels of total pay of physicians and dentists employed by or serving in other departments and agencies of the Federal Government; and

(2) with the income of non-Federal physicians and dentists for the performance of services as physicians and dentists.

(b)(1) To assist the Congress and the President in carrying out the policy stated in subsection (a), the Secretary shall—

(A) define the bases for pay distinctions, if any, among various categories of physicians and dentists, including distinctions between physicians and dentists employed by the Veterans Health Administration and physicians and dentists employed by other departments and agencies of the Federal Government and between all Federal sector and non-Federal sector physicians and dentists; and

(B) obtain measures of income from the employment or practice of physicians and dentists outside the Administration, including both the Federal and non-Federal sectors, for use as guidelines for setting and periodically adjusting the amounts of special pay for physicians and dentists of the Administration.

(2) The Secretary shall submit to the President a report, on such date as the President may designate but not later than December 31, 1994, and once every four years thereafter, recommending appropriate rates of special pay to carry out the policy set forth in subsection (a) with respect to the pay of physicians and dentists in the Veterans Health Administration. The Secretary shall include in such report, when

considered appropriate and necessary by the Secretary, recommendations for modifications of the special pay levels set forth in this subchapter whenever—

(A) the Department is unable to recruit or retain a sufficient work force of well-qualified physicians and dentists in the Administration because the incomes and other employee benefits, to the extent that those benefits are reasonably quantifiable, of physicians and dentists outside the Administration who perform comparable types of duties are significantly in excess of the levels of total pay (including basic pay and special pay) and other employee benefits, to the extent that those benefits are reasonably quantifiable, available to those physicians and dentists employed by the Administration; or

(B) other extraordinary circumstances are such that special pay levels are needed to recruit or retain a sufficient number of well-qualified physicians and dentists.

(c) The President shall include in the budget transmitted to the Congress under section 1105 of title 31 after the submission of each report of the Secretary under subsection (b)(2) recommendations with respect to the exact rates of special pay for physicians and dentists under this subchapter and the cost of those rates compared with the cost of the special pay rates in effect under this subchapter at the time the budget is transmitted.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 197.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

### § 7440. Annual report

The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the use of the authorities provided in this subchapter. The report shall be submitted each year as part of the budget justification documents submitted by the Secretary in support of the budget of the President submitted pursuant to section 1105 of title 31 that year. Each such report shall include the following:

(1) A review of the use of the authorities provided in this subchapter (including the Secretary's and Under Secretary for Health's actions, findings, recommendations, and other activities under this subchapter) during the preceding fiscal year and the fiscal year during which the report is submitted.

(2) The plans for the use of the authorities provided in this subchapter for the next fiscal year.

(3) A description of the amounts of special pay paid during the preceding fiscal year, shown by category of pay.

(4) A list of those geographic areas, and those scarce specialties, for which special pay was paid during the preceding fiscal year, those for which special pay is being paid during the current fiscal year, and those for which special pay is expected to be paid during the next fiscal year, together with a summary of any differences among those three lists.

(5) The number of physicians and dentists (A) who left employment with the Veterans Health Administration during the preceding year, (B) who changed from full-time status to part-time status, (C) who changed from part-time status to full-time status, as well as (D) a summary of the reasons therefor.

(6) By specialty, the number of positions created and the number of positions abolished during the preceding fiscal year and a summary of the reasons for such actions.

(7) The number of unfilled physician and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and a summary of the reasons that such positions remain unfilled and, in the case of any specialty not designated as a scarce specialty for purposes of special pay under this subchapter, an explanation (including comparisons with other specialties that have been so designated) of why the specialty has not been so designated.

(Added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 198; amended Pub. L. 103-446, title XII, § 1201(c)(6), Nov. 2, 1994, 108 Stat. 4684.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4118 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1994—Par. (1). Pub. L. 103-446 substituted "Under Secretary for Health's actions" for "Chief Medical Director's actions".

#### EFFECTIVE DATE

Section effective on first day of first pay period after July 1, 1991, subject to transition and savings provisions and prohibition on retroactive agreements, see section 104 of Pub. L. 102-40, set out as a note under section 7431 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7432 of this title.

### SUBCHAPTER IV—PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

#### § 7451. Nurses and other health-care personnel: competitive pay

(a)(1) It is the purpose of this section to ensure, by a means providing increased responsibility and authority to directors of Department health-care facilities, that the rates of basic pay for health-care personnel positions described in paragraph (2) in each Department health-care facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for that facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-



care facilities in the same labor-market area in the recruitment and retention of qualified personnel for those positions.

(2) The health-care personnel positions referred to in paragraph (1) (hereinafter in this section referred to as "covered positions") are the following:

(A) Registered nurse.

(B) Such positions referred to in paragraphs (1) and (3) of section 7401 of this title (other than the positions of physician, dentist, and registered nurse) as the Secretary may determine upon the recommendation of the Under Secretary for Health.

(3)(A) Except as provided in subparagraph (B), the rates of basic pay for covered positions in the Department shall be established and adjusted in accordance with this section instead of subsection (b)(1) of section 7404 of this title or chapter 53 of title 5.

(B) Under such regulations as the Secretary shall prescribe, the Secretary shall establish and adjust the rates of basic pay for covered positions at the following health-care facilities in order to provide rates of basic pay that enable the Secretary to recruit and retain sufficient numbers of health-care personnel in such positions at those facilities:

(i) The Veterans Memorial Medical Center in the Republic of the Philippines.

(ii) Department of Veterans Affairs health-care facilities located outside the contiguous States, Alaska, and Hawaii.

(4) The Secretary, after receiving the recommendation of the Under Secretary for Health, shall prescribe regulations setting forth criteria and procedures to carry out this section and section 7452 of this title. Requirements in such regulations for directors to provide and maintain documentation of actions taken under this section shall require no more documentation than the minimum essential for responsible administration.

(b) The Secretary shall maintain the five grade levels for nurses employed by the Department under section 7401(1) of this title as specified in the Nurse Schedule in section 7404(b) of this title. The Secretary shall, pursuant to regulations prescribed to carry out this subchapter, establish grades for other covered positions as the Secretary considers appropriate.

(c)(1) For each grade in a covered position, there shall be a range of basic pay. The maximum rate of basic pay for a grade shall be 133 percent of the minimum rate of basic pay for the grade, except that, if the Secretary determines that a higher maximum rate is necessary with respect to any such grade in order to recruit and retain a sufficient number of high-quality health-care personnel, the Secretary may raise the maximum rate of basic pay for that grade to a rate not in excess of 175 percent of the minimum rate of basic pay for the grade. Whenever the Secretary exercises the authority under the preceding sentence to establish the maximum rate of basic pay at a rate in excess of 133 percent of the minimum rate for that grade, the Secretary shall, in the next annual report required by subsection (g),<sup>1</sup> provide justification

for doing so to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2) The maximum rate of basic pay for any grade for a covered position may not exceed the maximum rate of basic pay established for positions in level V of the Executive Schedule under section 5316 of title 5.

(3) The range of basic pay for each such grade shall be divided into equal increments, known as "steps". The Secretary shall prescribe the number of steps. Each grade in a covered position shall have the same number of steps. Rates of pay within a grade may not be established at rates other than whole steps. Any increase (other than an adjustment under subsection (d)) within a grade in the rate of basic pay payable to an employee in a covered position shall be by one or more of such step increments.

(d)(1) Subject to subsection (e), the rates of basic pay for each grade in a covered position shall be adjusted periodically in accordance with this subsection in order to achieve the purposes of this section. Such adjustments shall be made—

(A) whenever there is an adjustment under section 5303 of title 5 in the rates of pay under the General Schedule, with the adjustment under this subsection to have the same effective date and to be by the same percentage as the adjustment in the rates of basic pay under the General Schedule; and

(B) at such additional times as the director of a Department health-care facility, with respect to employees in that grade at that facility, or the Under Secretary for Health, with respect to covered Regional and Central Office employees in that grade, determines.

(2) An adjustment in rates of basic pay under this subsection for a grade shall be carried out by adjusting the amount of the minimum rate of basic pay for that grade in accordance with paragraph (3) and then adjusting the other rates for that grade to conform to the requirements of subsection (c). Except as provided in paragraph (1)(A), such an adjustment in the minimum rate of basic pay for a grade shall be made by the director of a Department health-care facility so as to achieve consistency with the beginning rate of compensation for corresponding health-care professionals in the Bureau of Labor Statistics (BLS) labor-market area of that facility.

(3)(A) In the case of a Department health-care facility located in an area for which there is current information, based upon an industry-wage survey by the Bureau of Labor Statistics for that labor market, on compensation for corresponding health-care professionals for the BLS labor-market area of that facility, the director of the facility concerned shall use that information as the basis for making adjustments in rates of pay under this subsection. Whenever the Bureau of Labor Statistics releases the results of a new industry-wage survey for that labor market that includes information on compensation for corresponding health-care professionals, the director of that facility shall determine, not later than 30 days after the results of the survey are released, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the

<sup>1</sup> See References in Text note below.

purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(B) In the case of a Department health-care facility located in an area for which the Bureau of Labor Statistics does not have current information on compensation for corresponding health-care professionals for the labor-market area of that facility for any covered position, the director of that facility shall conduct a survey in accordance with this subparagraph and shall adjust the amount of the minimum rate of basic pay for grades in that covered position at that facility based upon that survey. To the extent practicable, the director shall use third-party industry wage surveys to meet the requirements of the preceding sentence. Any such survey shall be conducted in accordance with regulations prescribed by the Secretary. Those regulations shall be developed in consultation with the Secretary of Labor in order to ensure that the director of a facility collects information that is valid and reliable and is consistent with standards of the Bureau. The survey should be conducted using methodology comparable to that used by the Bureau in making industry-wage surveys except to the extent determined infeasible by the Secretary. To the extent practicable, all surveys conducted pursuant to this subparagraph or subparagraph (A) shall include the collection of salary midpoints, actual salaries, lowest and highest salaries, average salaries, bonuses, incentive pays, differential pays, actual beginning rates of pay, and such other information needed to meet the purpose of this section. Upon conducting a survey under this subparagraph, the director concerned shall determine, not later than 30 days after the date on which the collection of information through the survey is completed or published, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(C)(i) A director of a Department health-care facility may use data on the compensation paid to certified registered nurse anesthetists who are employed on a salary basis by entities that provide anesthesia services through certified registered nurse anesthetists in the labor-market area only if the director—

(I) has conducted a survey of compensation for certified registered nurse anesthetists in the local labor-market area of the facility under subparagraph (B);

(II) has used all available administrative authority with regard to collection of survey data; and

(III) makes a determination (under regulations prescribed by the Secretary) that such survey methods are insufficient to permit the adjustments referred to in subparagraph (B) for such nurse anesthetists employed by the facility.

(ii) For the purposes of this subparagraph, certified registered nurse anesthetists who are so employed by such entities shall be deemed to be corresponding health-care professionals to the certified registered nurse anesthetists employed by the facility.

(D) The Under Secretary for Health shall prescribe regulations providing for the adjustment of the rates of basic pay for Regional and Central Office employees in covered positions in order to assure that those rates are sufficient and competitive.

(E) The director of a facility or Under Secretary for Health may not adjust rates of basic pay under this subsection for any pay grade so that the minimum rate of basic pay for that grade is greater than the beginning rates of compensation for corresponding positions at non-Department health-care facilities.

(4) If the director of a Department health-care facility, or the Under Secretary for Health with respect to Regional and Central Office employees, determines, after any survey under paragraph (3)(B) that it is not necessary to adjust the rates of basic pay for employees in a grade of a covered position at that facility in order to carry out the purpose of this section, such an adjustment for employees at that facility in that grade shall not be made.

(5) Information collected by the Department in surveys conducted under this subsection is not subject to disclosure under section 552 of title 5.

(6) In this subsection—

(A) The term “beginning rate of compensation”, with respect to health-care personnel positions in non-Department health-care facilities corresponding to a grade of a covered position, means the sum of—

(i) the minimum rate of pay established for personnel in such positions who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care personnel employed in the same category of Department covered positions; and

(ii) other employee benefits for those positions to the extent that those benefits are reasonably quantifiable.

(B) The term “corresponding”, with respect to health-care personnel positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care personnel positions in Department health-care facilities.

(e)(1) An adjustment in a rate of basic pay under subsection (d) may not reduce the rate of basic pay applicable to any grade of a covered position.

(2) The director of a Department health-care facility, in determining whether to carry out a wage survey under subsection (d)(3) with respect to rates of basic pay for a grade of a covered position, may not consider as a factor in such determination the absence of a current recruitment or retention problem for personnel in that grade of that position. The director shall make such a determination based upon whether, in ac-

cordance with criteria established by the Secretary, there is a significant pay-related staffing problem at that facility in any grade for a position. If the director determines that there is such a problem, or that such a problem is likely to exist in the near future, the Director shall provide for a wage survey in accordance with subsection (d)(3).

(3) The Under Secretary for Health may, to the extent necessary to carry out the purposes of subsection (d), modify any determination made by the director of a Department health-care facility with respect to adjusting the rates of basic pay applicable to covered positions. If the determination of the director would result in an adjustment in rates of basic pay applicable to covered positions, any action by the Under Secretary under the preceding sentence shall be made before the effective date of such pay adjustment. Upon such action by the Under Secretary, any adjustment shall take effect on the first day of the first pay period beginning after such action. The Secretary shall ensure that the Under Secretary establishes a mechanism for the timely exercise of the authority in this paragraph.

(4) Each director of a Department health-care facility shall provide to the Secretary, not later than July 31 each year, a report on staffing for covered positions at that facility. The report shall include the following:

(A) Information on turnover rates and vacancy rates for each covered position, including a comparison of those rates with the rates for the preceding three years.

(B) The director's findings concerning the review and evaluation of the facility's staffing situation, including whether there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position and, if so, whether a wage survey was conducted, or will be conducted with respect to that position.

(C) In any case in which the director conducts such a wage survey during the period covered by the report, information describing the survey and any actions taken or not taken based on the survey, and the reasons for taking (or not taking) such actions.

(D) In any case in which the director, after finding that there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position, determines not to conduct a wage survey with respect to that position, a statement of the reasons why the director did not conduct such a survey.

(5) Not later than September 30 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on staffing for covered positions at Department health care facilities. Each such report shall include the following:

(A) A summary and analysis of the information contained in the most recent reports submitted by facility directors under paragraph (4).

(B) The information for each such facility specified in paragraph (4).

(f) Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding any pay adjustments under the authority of subsection (d) effective during the 12 months preceding the submission of the report. Each such report shall set forth, by health-care facility, the percentage of such increases and, in any case in which no increase was made, the basis for not providing an increase.

(g) For the purposes of this section, the term "health-care facility" means a medical center, an independent outpatient clinic, or an independent domiciliary facility.

(Added Pub. L. 101-366, title I, §102(b), Aug. 15, 1990, 104 Stat. 431, §4141; renumbered §7451 and amended Pub. L. 102-40, title III, §301(b), (c), title IV, §401(c)(1)(A), (2), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title III, §§301(b)-303, 304(b), 307, Nov. 4, 1992, 106 Stat. 4951-4953; Pub. L. 103-446, title XII, §1201(c)(7), (e)(23), Nov. 2, 1994, 108 Stat. 4684, 4686; Pub. L. 104-110, title I, §101(i), Feb. 13, 1996, 110 Stat. 768; Pub. L. 106-419, title II, §201(a), Nov. 1, 2000, 114 Stat. 1838; Pub. L. 107-135, title I, §133, Jan. 23, 2002, 115 Stat. 2454.)

#### REFERENCES IN TEXT

Subsection (g), referred to in subsec. (c)(1), was repealed and subsec. (h) was redesignated (g) by Pub. L. 106-419, title II, §201(a)(4), Nov. 1, 2000, 114 Stat. 1840.

The General Schedule, referred to in subsec. (d)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

#### AMENDMENTS

2002—Subsec. (d)(3)(A). Pub. L. 107-135, §133(1)(A), struck out "beginning rates of" before "compensation for corresponding health-care professionals" in two places.

Subsec. (d)(3)(B). Pub. L. 107-135, §133(1)(B), struck out "beginning rates of" before "compensation for corresponding health-care professionals".

Subsec. (d)(3)(C)(i). Pub. L. 107-135, §133(1)(C), struck out "beginning rates of" before "compensation" in introductory provisions and in subcl. (I).

Subsec. (d)(4). Pub. L. 107-135, §133(2), struck out "or at any other time that an adjustment in rates of pay is scheduled to take place under this subsection" after "paragraph (3)(B)" and "Whenever a director makes such a determination, the director shall within 10 days notify the Under Secretary for Health of the decision and the reasons for the decision." at end.

Subsec. (e)(4). Pub. L. 107-135, §133(3), struck out "grade in a" before "covered position" in subpar. (A), struck out "grade of a" before "covered position" and substituted "that position" for "that grade" in subpar. (B), and struck out "grade of a" before "covered position" in subpar. (D).

2000—Subsec. (d)(1). Pub. L. 106-419, §201(a)(1)(A)(i), substituted "Subject to subsection (e), the rates" for "The rates" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 106-419, §201(a)(1)(A)(ii), substituted "section 5303" for "section 5305" and inserted "and to be by the same percentage" after "to have the same effective date".

Subsec. (d)(2). Pub. L. 106-419, §201(a)(1)(B), substituted "Except as provided in paragraph (1)(A), such" for "Such" in second sentence.

Subsec. (d)(3)(B). Pub. L. 106-419, §201(a)(1)(C), inserted after first sentence "To the extent practicable, the director shall use third-party industry wage surveys to meet the requirements of the preceding sen-

tence.”, inserted before penultimate sentence “To the extent practicable, all surveys conducted pursuant to this subparagraph or subparagraph (A) shall include the collection of salary midpoints, actual salaries, lowest and highest salaries, average salaries, bonuses, incentive pays, differential pays, actual beginning rates of pay, and such other information needed to meet the purpose of this section.”, and in penultimate sentence inserted “or published” after “survey is completed”.

Subsec. (d)(3)(C)(iii). Pub. L. 106-419, §201(a)(1)(D), struck out cl. (iii) which read as follows: “The authority of the director to use such additional data under this subparagraph with respect to certified registered nurse anesthetists expires on January 1, 1998.”

Subsec. (e). Pub. L. 106-419, §201(a)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Adjustments in rates of basic pay under subsection (d) may increase or reduce the rates of basic pay applicable to any grade of a covered position. In the case of such an adjustment that reduces the rates of pay for a grade, an employee serving at a Department health-care facility on the day before the effective date of that adjustment in a position affected by the adjustment may not (by reason of that adjustment) incur a reduction in the rate of basic pay applicable to that employee so long as the employee continues to serve in that covered position at that facility. If such an employee is subsequently promoted to a higher grade, or advanced to a higher step within the employee's grade, for which the rate of pay as so adjusted is lower than the employee's rate of basic pay on the day before the effective date of the promotion, the employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to the employee before the promotion so long as the employee continues to serve in that covered position at that facility.”

Subsec. (f). Pub. L. 106-419, §201(a)(3), substituted “March 1 of each year” for “February 1 of 1991, 1992, and 1993” and “subsection (d)” for “subsection (d)(1)(A)”.

Subsecs. (g), (h). Pub. L. 106-419, §201(a)(4), redesignated subsec. (h) as (g) and struck out former subsec. (g) which directed that not later than Dec. 1 of 1991, 1992, and 1993, the Secretary was to submit to Congress a report regarding the exercise of authorities provided in this section for the preceding fiscal year and listed items to be included in report.

1996—Subsec. (d)(3)(C)(iii). Pub. L. 104-110 substituted “January 1, 1998” for “April 1, 1995”.

1994—Subsec. (d)(3)(C)(i)(I). Pub. L. 103-446, §1201(e)(23), substituted “labor-market area” for “labor market area”.

Subsec. (g)(1). Pub. L. 103-446, §1201(c)(7), substituted “Under Secretary for Health's actions” for “Chief Medical Director's actions”.

1992—Subsec. (a)(2)(B). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

Subsec. (a)(3). Pub. L. 102-585, §302, designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), the rates” for “The rates”, and added subpar. (B).

Subsec. (a)(4). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

Subsec. (b). Pub. L. 102-585, §301(b), substituted “five” for “four”.

Subsec. (d)(1)(B). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

Subsec. (d)(3)(C). Pub. L. 102-585, §303(2), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

Subsec. (d)(3)(D). Pub. L. 102-585, §303(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

Subsec. (d)(3)(E). Pub. L. 102-585, §303(1), redesignated subpar. (D) as (E).

Subsec. (d)(4). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

Subsec. (g)(9). Pub. L. 102-585, §304(b), added par. (9).

Subsec. (g)(10). Pub. L. 102-585, §307, added par. (10).

1991—Pub. L. 102-40, §401(c)(1)(A), renumbered section 4141 of this title as this section.

Subsec. (a)(2)(B). Pub. L. 102-40, §401(c)(2)(A)(i), substituted “paragraphs (1) and (3) of section 7401” for “clauses (1) and (3) of section 4104”.

Subsec. (a)(3). Pub. L. 102-40, §§301(c), 401(c)(2)(A)(ii), substituted “7404” for “4107” and inserted before period at end “or chapter 53 of title 5”.

Subsec. (a)(4). Pub. L. 102-40, §401(c)(2)(A)(iii), substituted “7452” for “4142”.

Subsec. (b). Pub. L. 102-40, §401(c)(2)(B), substituted “7401(1)” for “4104(1)” and “7404(b)” for “4107(b)”.

Subsec. (d)(1)(B). Pub. L. 102-40, §301(b)(1), inserted “or the Chief Medical Director, with respect to covered Regional and Central Office employees in that grade,” before “determines”.

Subsec. (d)(3)(C). Pub. L. 102-40, §301(b)(2)(B), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(3)(D). Pub. L. 102-40, §301(b)(2)(A), redesignated subpar. (C) as (D) and inserted “or Chief Medical Director” after “facility”.

Subsec. (d)(4). Pub. L. 102-40, §301(b)(3), inserted “, or the Chief Medical Director with respect to Regional and Central Office employees,” after “facility”.

Subsec. (g)(8). Pub. L. 102-40, §401(c)(2)(C), substituted “7452(b)(2)” for “4142(b)(2)”.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 301(b) to 303 and 304(b) of Pub. L. 102-585 effective with respect to first pay period beginning on or after end of six-month period beginning on Nov. 4, 1992, see section 308 of Pub. L. 102-585, set out as a note under section 7404 of this title.

#### EFFECTIVE DATE

Section 104 of Pub. L. 101-366, as amended by Pub. L. 102-40, title III, §301(e), May 7, 1991, 105 Stat. 208, provided that:

“(a) IN GENERAL.—(1) Except as provided in subsection (b), section 101 [amending former section 4107 of this title and enacting provisions set out as a note under former section 4107 of this title] and the amendments made by section 102 [enacting this section and section 4142 [now 7452] of this title and amending former sections 4104 and 4107 of this title] shall take effect on the date of enactment [Aug. 15, 1990].

“(2) The amendment made by section 103 [amending former section 4107 of this title] shall take effect on the first day of the first pay period beginning after April 1, 1991.

“(b) NEW PAY RATES.—The rates of basic pay established pursuant to section 4141 [now 7451] of title 38, United States Code, as added by section 102, shall take effect for covered positions (as defined in that section) with respect to the first pay period beginning on or after April 1, 1991.”

#### SAVINGS PROVISION

Section 301(a) of Pub. L. 102-40 provided that: “Physician assistants and expanded-function dental auxiliaries shall continue to be paid after August 14, 1990, according to the Nurse Schedule in section 4107(b) of title 38 [former section 4107(b) of this title], United States Code, as in effect on August 14, 1990, until the effective date of a determination by the Secretary to convert those occupations to ‘covered positions’ and pay them pursuant to section 7451 of such title, as redesignated by section 401(c).”

#### REPORT ON REQUESTS FOR WAIVERS OF PAY REDUCTIONS FOR REEMPLOYED ANNUITANTS TO FILL NURSE POSITIONS

Pub. L. 107-135, title I, §103, Jan. 23, 2002, 115 Stat. 2450, provided that:

“(a) REPORT.—Not later than March 28 of each of 2002 and 2003, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate

and the House of Representatives and to the National Commission on VA Nursing established under subtitle D [set out below] a report describing each request of the Secretary, during the fiscal year preceding such report, to the Director of the Office of Personnel Management for the following:

“(1) A waiver under subsection (i)(1)(A) of section 8344 of title 5, United States Code, of the provisions of such section in order to meet requirements of the Department of Veterans Affairs for appointments to nurse positions in the Veterans Health Administration.

“(2) A waiver under subsection (f)(1)(A) of section 8468 of title 5, United States Code, of the provisions of such section in order to meet requirements of the Department for appointments to such positions.

“(3) A grant of authority under subsection (i)(1)(B) of section 8344 of title 5, United States Code, for the waiver of the provisions of such section in order to meet requirements of the Department for appointments to such positions.

“(4) A grant of authority under subsection (f)(1)(B) of section 8468 of title 5, United States Code, for the waiver of the provisions of such section in order to meet requirements of the Department for appointments to such positions.

“(b) INFORMATION ON RESPONSES TO REQUESTS.—The report under subsection (a) shall specify for each request covered by the report—

“(1) the response of the Director to such request; and

“(2) if such request was granted, whether or not the waiver or authority, as the case may be, assisted the Secretary in meeting requirements of the Department for appointments to nurse positions in the Veterans Health Administration.”

#### NATIONAL COMMISSION ON VA NURSING

Pub. L. 107-135, title I, subtitle D, Jan. 23, 2002, 115 Stat. 2454, provided that:

#### “SEC. 141. ESTABLISHMENT OF COMMISSION.

“(a) ESTABLISHMENT.—There is hereby established in the Department of Veterans Affairs a commission to be known as the ‘National Commission on VA Nursing’ (hereinafter in this subtitle referred to as the ‘Commission’).

“(b) COMPOSITION.—The Commission shall be composed of 12 members appointed by the Secretary of Veterans Affairs as follows:

“(1) At least two shall be recognized representatives of employees (including nurses) of the Department of Veterans Affairs.

“(2) At least one shall be a representative of professional associations of nurses of the Department or similar organizations affiliated with the Department’s health care practitioners.

“(3) At least one shall be a nurse from a nursing school affiliated with the Department of Veterans Affairs.

“(4) At least two shall be representatives of veterans.

“(5) At least one shall be an economist.

“(6) The remainder shall be appointed in such manner as the Secretary considers appropriate.

“(c) CHAIR OF COMMISSION.—The Secretary of Veterans Affairs shall designate one of the members of the Commission to chair the Commission.

“(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall be filled in the same manner as the original appointment.

“(e) INITIAL ORGANIZATION REQUIREMENTS.—All appointments to the Commission shall be made not later than 60 days after the date of the enactment of this Act [Jan. 23, 2002]. The Commission shall convene its first meeting not later than 60 days after the date as of which all members of the Commission have been appointed.

#### “SEC. 142. DUTIES OF COMMISSION.

“(a) ASSESSMENT.—The Commission shall—

“(1) consider legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel by the Department of Veterans Affairs; and

“(2) assess the future of the nursing profession within the Department.

“(b) RECOMMENDATIONS.—The Commission shall recommend legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in the Department.

#### “SEC. 143. REPORTS.

“(a) COMMISSION REPORT.—The Commission shall, not later than two years after the date of its first meeting, submit to Congress and the Secretary of Veterans Affairs a report on the Commission’s findings and recommendations.

“(b) SECRETARY OF VETERANS AFFAIRS REPORT.—Not later than 60 days after the date of the Commission’s report under subsection (a), the Secretary shall submit to Congress a report—

“(1) providing the Secretary’s views on the Commission’s findings and recommendations; and

“(2) explaining what actions, if any, the Secretary intends to take to implement the recommendations of the Commission and the Secretary’s reasons for doing so.

#### “SEC. 144. POWERS.

“(a) HEARINGS.—The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this subtitle, hold hearings and take testimony to the extent that the Commission or any member considers advisable.

“(b) INFORMATION.—The Commission may secure directly from any Federal department or agency information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this subtitle.

#### “SEC. 145. PERSONNEL MATTERS.

“(a) PAY OF MEMBERS.—Members of the Commission shall serve without pay by reason of their work on the Commission.

“(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

“(c) STAFF.—(1) The Secretary may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties.

“(2) The Secretary may fix the pay of the staff director and other personnel appointed under paragraph (1) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS-15 of the General Schedule.

“(d) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Secretary, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its duties.

#### “SEC. 146. TERMINATION OF COMMISSION.

“The Commission shall terminate 90 days after the date of the submission of its report under section 143(a).”

#### REPORT ON NURSE LOCALITY PAY

Pub. L. 105-368, title IX, §905, Nov. 11, 1998, 112 Stat. 3361, provided that:

“(a) REPORT REQUIRED.—(1) Not later than February 1, 1999, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report assessing the system of locality-based pay for nurses established under the Department of Veterans Affairs Nurse Pay Act of 1990 (Public Law 101-366) and now set forth in section 7451 of title 38, United States Code.

“(2) The Secretary shall submit with the report under paragraph (1) a copy of the report on the locality pay system prepared by the contractor pursuant to a contract with Systems Flow, Inc., that was entered into on May 22, 1998.

“(b) MATTERS TO BE INCLUDED.—The report of the Secretary under subsection (a)(1) shall include the following:

“(1) An assessment of the effects of the locality-based pay system, including information, shown by facility and grade level, regarding the frequency and percentage increases, if any, in the rate of basic pay under that system of nurses employed in the Veterans Health Administration.

“(2) An assessment of the manner in which that system is being applied.

“(3) Plans and recommendations of the Secretary for administrative and legislative improvements or revisions to the locality pay system.

“(4) An explanation of the reasons for any decision not to adopt any recommendation in the report referred to in subsection (a)(2).

“(c) UPDATED REPORT.—Not later than February 1, 2000, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report updating the report submitted under subsection (a)(1).”

#### RATIFICATION OF ACTIONS DURING PERIOD OF EXPIRED AUTHORITY

Any action taken by Secretary of Veterans Affairs before Feb. 13, 1996, under provision of law amended by title I of Pub. L. 104-110 that was taken during period beginning on date on which authority of Secretary under such provision of law expired and ending on Feb. 13, 1996, considered to have same force and effect as if such amendment had been in effect at time of that action, see section 103 of Pub. L. 104-110, set out as a note under section 1710 of this title.

#### NURSING PERSONNEL QUALIFICATION STANDARDS

Section 305 of Pub. L. 102-585 provided that:

“(a) REVISION.—The Secretary of Veterans Affairs shall conduct a review of the qualification standards used for nursing personnel at Department health-care facilities and the relationship between those standards and the compression of nursing personnel in the existing intermediate and senior grades. Based upon that review, the Secretary shall revise those qualification standards—

“(1) to reflect the five grade levels for nursing personnel under the Nurse Schedule [see 38 U.S.C. 7404(b)(1)], as amended by section 301; and

“(2) to reduce the compression of nursing personnel in the existing intermediate and senior grades.

“(b) DEADLINE FOR PRESCRIBING STANDARDS.—The Secretary shall prescribe revised qualification standards for nursing personnel pursuant to subsection (a) not later than six months after the date of the enactment of this Act [Nov. 4, 1992].

“(c) REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's findings and actions under this section. The report shall be submitted not later than six months after the date on which revised qualification standards for nursing personnel are prescribed pursuant to subsection (b).”

#### REPORT ON PAY FOR CHIEF NURSE POSITION

Section 306 of Pub. L. 102-585 provided that:

“(a) REVIEW.—The Secretary of Veterans Affairs shall conduct a review of—

“(1) the process for determining the rate of basic pay applicable to the Chief Nurse position at Department of Veterans Affairs health-care facilities; and

“(2) the relationship between the rate of such basic pay and the rate of basic pay applicable to nurses in positions subordinate to the Chief Nurse at the respective Department facilities.

The review shall include an assessment of the adequacy of that process in determining an equitable pay rate for the Chief Nurse position, including an assessment of the accuracy of data collected in the survey process and the difficulties in obtaining accurate data.

“(b) REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the review and assessment conducted under subsection (a). To the extent that the review discloses difficulties in obtaining accurate data in the survey process with respect to the Chief Nurse position at Department facilities, the Secretary shall include in the report recommendations for corrective action. The Secretary shall also include in the report (1) a listing of the salary differential (expressed as a percentage) between the Chief Nurse at a facility and the highest paid nurse (excluding certified registered nurse anesthetists) serving in a position subordinate to the Chief Nurse, and (2) an analysis of such data. The report shall be submitted not later than 12 months after the date of the enactment of this Act [Nov. 4, 1992].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7452 of this title; title 5 section 5302.

#### § 7452. Nurses and other health-care personnel: administration of pay

(a)(1) Regulations prescribed under section 7451(a) of this title shall provide that whenever an employee in a covered position is given a new duty assignment which is a promotion, the rate of basic pay of that employee shall be increased at least one step increment in that employee's grade.

(2) A nurse serving in a head nurse position shall while so serving receive basic pay at a rate two step increments above the rate that would otherwise be applicable to the nurse. If such a nurse is in the highest or next-to-highest step for that nurse's grade, the preceding sentence shall be applied by extrapolation to create additional steps only for the purposes of this paragraph. The limitation in section 7451(c)(1) of this title shall not apply with respect to increased basic pay under this paragraph.

(3) An employee in a covered position who is promoted to the next higher grade shall be paid in that grade at a step having a rate of basic pay that is greater than the rate of basic pay applicable to the employee in a covered position on the day before the effective date of the promotion.

(b)(1) Under regulations which the Secretary prescribes for the administration of this section, the director of a Department health-care facility (A) shall pay a cash bonus (in an amount to be determined by the director not to exceed \$2,000) to an employee in a covered position at that facility who becomes certified in a specialty recognized by the Department, and (B) may provide such a bonus to an employee in such a position who has demonstrated both exemplary job performance and exemplary job

achievement. The authority of the Secretary under this subsection is in addition to any other authority of the Secretary to provide job performance incentives.

(2) The Secretary shall include in the annual report under section 7451(g)<sup>1</sup> of this title a discussion of the use during the period covered by the report of the payment of bonuses under this subsection and other job performance incentives available to the Secretary.

(c)(1) The Secretary shall provide (in regulations prescribed for the administration of this section) that the director of a Department health-care facility, in making a new appointment of a person under section 7401(1) of this title as an employee in a covered position for employment at that facility, may make that appointment at a rate of pay described in paragraph (3) without being subject to a requirement for prior approval at any higher level of authority within the Department in any case in which the director determines that it is necessary to do so in order to obtain the services of employees in covered positions in cases in which vacancies exist at that health-care facility.

(2) Such a determination may be made by the director of a health-care facility only in order to recruit employees in covered positions with specialized skills, especially employees with skills which are especially difficult or demanding.

(3) A rate of pay referred to in paragraph (1) is a rate of basic pay in excess of the minimum rate of basic pay applicable to the grade in which the appointment is made (but not in excess of the maximum rate of basic pay for that grade).

(4) Whenever the director of a health-care facility makes an appointment described in paragraph (1) without prior approval at a higher level of authority within the Department, the director shall—

(A) state in a document the reasons for employing the employee in a covered position at a rate of pay in excess of the minimum rate of basic pay applicable to the grade in which the employee is appointed (and retain that document on file); and

(B) in the first budget documents submitted to the Secretary by the director after the employee is employed, include documentation for the need for such increased rates of basic pay described in clause (A).

(5) Whenever the director of a health-care facility makes an appointment described in paragraph (1) on the basis of a determination described in paragraph (2), the covered employee appointed may continue to receive pay at a rate higher than that which would otherwise be applicable to that employee only so long as the employee continues to serve in a position requiring the specialized skills with respect to which the determination was made.

(d) Whenever the director of a health-care facility makes an appointment described in subsection (c)(1), the director may (without a regard to any requirement for prior approval at any higher level of authority within the Department) increase the rate of pay of other employ-

ees in the same covered position at that facility who are in the grade in which the appointment is made and are serving in a position requiring the specialized skills with respect to which the determination under subsection (c)(2) concerning the appointment was made. Any such increase shall continue in effect with respect to any employee only so long as the employee continues to serve in such a position.

(e) An employee in a covered position employed under section 7401(1) of this title who (without a break in employment) transfers from one Department health-care facility to another may not be reduced in grade or step within grade (except pursuant to a disciplinary action otherwise authorized by law) if the duties of the position to which the employee transfers are similar to the duties of the position from which the employee transferred. The rate of basic pay of such employee shall be established at the new health-care facility in a manner consistent with the practices at that facility for an employee of that grade and step, except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Secretary exercises the authority under the preceding sentence relating to the rate of basic pay of a transferred employee, the Secretary shall, in the next annual report required under section 7451(g)<sup>1</sup> of this title, provide justification for doing so.

(f) In this section, the term "covered position" has the meaning given that term in section 7451 of this title.

(Added Pub. L. 101-366, title I, §102(b), Aug. 15, 1990, 104 Stat. 435, §4142; renumbered §7452 and amended Pub. L. 102-40, title III, §301(d), title IV, §401(c)(1)(A), (3), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102-585, title III, §304(a), Nov. 4, 1992, 106 Stat. 4952.)

#### REFERENCES IN TEXT

Section 7451(g) of this title, referred to in subsecs. (b)(2) and (e), was repealed and subsec. (h) of section 7451 was redesignated (g) by Pub. L. 106-419, title II, §201(a)(4), Nov. 1, 2000, 114 Stat. 1840.

#### AMENDMENTS

1992—Subsec. (e). Pub. L. 102-585 inserted before period at end “, except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Secretary exercises the authority under the preceding sentence relating to the rate of basic pay of a transferred employee, the Secretary shall, in the next annual report required under section 7451(g) of this title, provide justification for doing so”.

1991—Pub. L. 102-40, §401(c)(1)(A), renumbered section 4142 of this title as this section.

<sup>1</sup> See References in Text note below.

Subsec. (a)(1). Pub. L. 102-40, §401(c)(3)(A)(i), substituted "7451(a)" for "4141(a)".

Subsec. (a)(2). Pub. L. 102-40, §401(c)(3)(A)(ii), substituted "7451(c)(1)" for "4141(c)(1)".

Subsec. (a)(3). Pub. L. 102-40, §301(d), substituted "paid" for "appointed".

Subsec. (b)(2). Pub. L. 102-40, §401(c)(3)(B), substituted "7451(g)" for "4141(g)".

Subsec. (c)(1). Pub. L. 102-40, §401(c)(3)(C), substituted "7401(1)" for "4104(1)".

Subsec. (e). Pub. L. 102-40, §401(c)(3)(C), substituted "7401(1)" for "4104(1)".

Subsec. (f). Pub. L. 102-40, §401(c)(3)(D), substituted "7451" for "4141".

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-585 effective with respect to first pay period beginning on or after end of six-month period beginning on Nov. 4, 1992, see section 308 of Pub. L. 102-585, set out as a note under section 7404 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7451 of this title.

### § 7453. Nurses: additional pay

(a) In addition to the rate of basic pay provided for nurses, a nurse shall receive additional pay as provided by this section.

(b) A nurse performing service on a tour of duty, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemeridian, shall receive additional pay for each hour of service on such tour at a rate equal to 10 percent of the nurse's hourly rate of basic pay if at least four hours of such tour fall between 6 postmeridian and 6 antemeridian. When less than four hours of such tour fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

(c) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of service on such tour at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

(d) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

(e)(1) A nurse performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service. The overtime rates shall be one and one-half times such nurse's hourly rate of basic pay.

(2) For the purposes of this subsection, overtime must be of at least 15 minutes duration in a day to be creditable for overtime pay.

(3) Compensatory time off in lieu of pay for service performed under the provisions of this subsection shall not be permitted, except as voluntarily requested in writing by the nurse in question.

(4) Any excess service performed under this subsection on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration.

(5) For the purposes of this subsection, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—

(A) such travel occurs during such nurse's tour of duty; or

(B) such travel—

(i) involves the performance of services while traveling,

(ii) is incident to travel that involves the performance of services while traveling,

(iii) is carried out under arduous conditions as determined by the Secretary, or

(iv) results from an event which could not be scheduled or controlled administratively.

(f) For the purpose of computing the additional pay provided by subsection (b), (c), (d), or (e), a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by 2,080.

(g) When a nurse is entitled to two or more forms of additional pay under subsection (b), (c), (d), or (e) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in subsection (e) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under subsection (d) for such service.

(h) A nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 percent of the hourly rate for excess service as provided in subsection (e).

(i) Any additional pay paid pursuant to this section shall not be considered as basic pay for the purposes of the following provisions of title 5 (and any other provision of law relating to benefits based on basic pay):

(1) Subchapter VI of chapter 55.

(2) Section 5595.

(3) Chapters 81, 83, 84, and 87.

(j)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Secretary may increase the rates of additional pay authorized under subsections (b) through (h) if the Secretary determines that it is necessary to do so in order to obtain or retain the services of nurses.

(2) An increase under paragraph (1) in rates of additional pay—

(A) may be made at any specific Department health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Depart-



ment health-care facility (based upon a reasonably representative sampling of such non-Federal facilities); and

(B) may be made on a nationwide, local, or other geographic basis if the Secretary finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 232; amended Pub. L. 103-446, title XII, § 1201(e)(24), (g)(6), Nov. 2, 1994, 108 Stat. 4686, 4687.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(e) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1994—Subsecs. (f), (g). Pub. L. 103-446, § 1201(e)(24), substituted “subsection (b), (c), (d), or (e)” for “subsections (b), (c), (d), or (e)”.

Subsec. (i)(3). Pub. L. 103-446, § 1201(g)(6), struck out “of title 5” before period at end.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7454, 7456, 7457 of this title; title 5 sections 6123, 6128.

### § 7454. Physician assistants and other health care professionals: additional pay

(a) Physician assistants and expanded-function dental auxiliaries shall be entitled to additional pay on the same basis as provided for nurses in section 7453 of this title.

(b)(1) When the Secretary determines it to be necessary in order to obtain or retain the services of individuals in positions listed in section 7401(3) of this title, the Secretary may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in section 7453 of this title.

(2) Health care professionals employed in positions referred to in paragraph (1) shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.

(3) Employees appointed under section 7408 of this title shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.

(c) The Secretary shall prescribe by regulation standards for compensation and payment under this section.

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 107-135, title I, § 121(a), Jan. 23, 2002, 115 Stat. 2450; Pub. L. 108-170, title III, §§ 301(d), 303(a), Dec. 6, 2003, 117 Stat. 2057, 2058.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(f) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-170, § 301(d), substituted “individuals in positions listed in section

7401(3) of this title,” for “certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, or occupational therapists.”.

Subsec. (b)(3). Pub. L. 108-170, § 303(a), added par. (3).  
2002—Subsec. (b). Pub. L. 107-135 designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-170, title III, § 303(b), Dec. 6, 2003, 117 Stat. 2058, provided that: “The amendment made by subsection (a) [amending this section] shall take effect with respect to the first pay period beginning on or after January 1, 2004.”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-135, title I, § 121(b), Jan. 23, 2002, 115 Stat. 2450, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to pay periods beginning on or after the date of the enactment of this Act [Jan. 23, 2002].”

### § 7455. Increases in rates of basic pay

(a)(1) Subject to subsections (b), (c), and (d), when the Secretary determines it to be necessary in order to obtain or retain the services of persons described in paragraph (2), the Secretary may increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay—

(A) may be made on a nationwide basis, local basis, or other geographic basis; and

(B) may be made—

(i) for one or more of the grades listed in the schedules in subsection (b)(1) of section 7404 of this title;

(ii) for one or more of the health personnel fields within such grades; or

(iii) for one or more of the grades of the General Schedule under section 5332 of title 5.

(2) Paragraph (1) applies to the following:

(A) Individuals employed in positions listed in paragraphs (1) and (3) of section 7401 of this title.

(B) Health-care personnel who—

(i) are employed in the Administration (other than administrative, clerical, and physical plant maintenance and protective services employees);

(ii) are paid under the General Schedule pursuant to section 5332 of title 5;

(iii) are determined by the Secretary to be providing either direct patient-care services or services incident to direct patient-care services; and

(iv) would not otherwise be available to provide medical care and treatment for veterans.

(C) Employees who are Department police officers providing services under section 902 of this title.

(b) Increases in rates of basic pay may be made under subsection (a) only in order—

(1) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market;

(2) to achieve adequate staffing at particular facilities; or

(3) to recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

(c)(1) The amount of any increase under subsection (a) in the maximum rate for any grade may not (except in the case of nurse anesthetists, pharmacists, and licensed physical therapists) exceed by two times the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Under Secretary for Health.

(2) Whenever the amount of an increase under subsection (a) results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under paragraph (1), the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.

(d)(1) In the exercise of the authority provided in subsection (a) with respect to personnel described in subparagraph (B) or (C) of paragraph (2) of that subsection to increase the rates of basic pay for any category of personnel not appointed under subchapter I, the Secretary shall, not less than 45 days before the effective date of a proposed increase, notify the President of the Secretary's intention to provide such an increase.

(2) Such a proposed increase shall not take effect if, before the effective date of the proposed increase, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval.

(3) If, before that effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 102-83, § 2(c)(7), Aug. 6, 1991, 105 Stat. 402; Pub. L. 102-405, title II, § 201, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 106-419, title II, § 203, Nov. 1, 2000, 114 Stat. 1841.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(g) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2000—Subsec. (c)(1). Pub. L. 106-419 inserted “, pharmacists,” after “anesthetists”.

1992—Subsec. (c). Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in par. (1).

Pub. L. 102-405, § 201, designated existing provisions as par. (1), inserted “by two times” after first reference to “exceed”, and added par. (2).

1991—Subsec. (a)(2)(C). Pub. L. 102-83 substituted “902” for “218”.

EX. ORD. NO. 12797. REVIEW OF INCREASES IN RATES OF BASIC PAY FOR CERTAIN EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS AND OTHER AGENCIES

Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7455(d)(2)–(3) of title 38, United States Code, in order to establish procedures for review of proposed increases in the rates of basic pay of certain employees of the Department of Veterans Affairs and of other agencies, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Personnel Management is designated to exercise the authority vested in the President by section 7455(d)(2)–(3) of title 38, United States Code, to review and approve or disapprove the increases in rates of basic pay proposed by the Secretary of Veterans Affairs and to provide the appropriate committees of the Congress with a written statement of the reasons for any such disapproval.

SEC. 2. In exercising this authority, the Director of the Office of Personnel Management shall assure that any increases in basic pay proposed by the Secretary of Veterans Affairs are in the best interest of the Federal Government, do not exceed the amounts authorized by section 7455, and are made only to:

- (1) Provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;
- (2) Achieve adequate staffing at particular facilities;

or

- (3) Recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

SEC. 3. The Secretary of Veterans Affairs shall provide to the Director of the Office of Personnel Management such information as the Director may request in order to carry out the responsibilities delegated by this order.

SEC. 4. The Director of the Office of Personnel Management shall provide the Secretary of Veterans Affairs with a copy of any written statement provided to the appropriate committees of the Congress that sets forth the reasons for disapproval of any proposed increase in rates of basic pay under this order.

SEC. 5. In the case of any other law authorizing another agency to use the authority provided by section 7455 of title 38, United States Code, the Director of the Office of Personnel Management shall exercise the same authority in the same manner as provided for with respect to section 7455 under sections 1 through 4 of this order, and the head of such other agency shall provide information requested by the Director as provided for in section 3 of this order.

SEC. 6. Executive Order No. 12438 of August 23, 1983, is revoked.

SEC. 7. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 7457, 7612 of this title.

### § 7456. Nurses: special rules for weekend duty

(a) Subject to subsection (b), if the Secretary determines it to be necessary in order to obtain or retain the services of nurses at any Department health-care facility, the Secretary may provide, in the case of nurses appointed under this chapter and employed at such facility, that such nurses who work two regularly scheduled 12-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 40-hour basic workweek.

(b)(1) Basic and additional pay for a nurse who is considered under subsection (a) to have

worked a full 40-hour basic workweek shall be subject to paragraphs (2) and (3).

(2) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 12-hour tour of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be derived by dividing the nurse's annual rate of basic pay by 1,248.

(3)(A) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled two 12-hour tours of duty is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a Saturday or Sunday or in excess of 24 hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

(B) Except as provided in subparagraph (C), a nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

(C) If the Secretary determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly scheduled two 12-hour tours of duty may be paid overtime pay under section 7453(e) of this title, or other applicable law, for all or part of the hours of officially ordered or approved service performed by such nurse in excess of 40 hours during an administrative workweek.

(c) A nurse described in subsection (b)(1) who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of five hours of leave for three hours of absence.

(d) The Secretary shall prescribe regulations for the implementation of this section.

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 235.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(h) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### § 7457. On-call pay

(a) The Secretary may pay an employee to whom this section applies pay at the rate provided in section 7453(h) of this title except for such time as the employee may be called back to work.

(b) This section applies to an employee who meets each of the following criteria:

(1) The employee is employed in a position listed in paragraph (3) of section 7401 of this title or meets the criteria specified in clauses (i), (ii), and (iii) of section 7455(a)(2)(B) of this title.

(2) The employee is employed in a work unit for which on-call premium pay is authorized.

(3) The employee is officially scheduled to be on call outside such employee's regular hours or on a holiday designated by Federal statute or Executive order.

(c) An employee who is eligible for on-call pay under subsection (a) and who was receiving standby premium pay pursuant to section 5545 of title 5 on May 20, 1988, shall, as long as such employee is employed in the same position and work unit and remains eligible for such standby pay, receive pay for any period of on-call duty at the rate equal to the greater of—

(1) the rate of pay which such employee would receive if being paid the rate of standby pay pursuant to such section that such individual would be entitled to receive if such individual were not scheduled to be on call instead, or

(2) the rate of pay which such employee is entitled to receive including on-call premium pay described in subsection (a).

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 236.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(j) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7404 of this title.

#### § 7458. Recruitment and retention bonus pay

(a)(1) In order to recruit and retain registered nurses, the Secretary may enter into agreements under this section. Such an agreement may be entered into with any registered nurse who is employed at, or who agrees to accept employment with the Department at, a Department health-care facility that is designated by the Secretary as a health-care facility with a significant shortage in registered nurses in any clinical service.

(2) A registered nurse entering into an agreement under this section shall agree to remain employed by the Department as a registered nurse for a period of time to be specified in the agreement and to serve during that period in a specific health-care facility that is designated by the Secretary as a health-care facility with a significant shortage of registered nurses in that nurse's clinical service. Such period may not be less than two years or more than four years. Such employment during such period may be on a full-time basis or a part-time basis, as specified in the agreement. Part-time employment as specified in such an agreement may not be less than half-time.

(b)(1) The Secretary shall pay to any nurse entering into an agreement under this section bonus pay in an amount specified in the agreement. The amount of such bonus pay may not exceed—

(A) \$2,000 per year, in the case of an agreement for two years,

(B) \$3,000 per year, in the case of an agreement for three years, and

(C) \$4,000 per year, in the case of an agreement for four years.

(2) In the case of an agreement for employment on less than a full-time basis, the amount of bonus pay shall be pro rated<sup>1</sup> accordingly.

<sup>1</sup> So in original.

(c)(1) Except as provided in paragraph (2) of this subsection, a bonus under this section shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement.

(2)(A) The Secretary may make a payment in an amount not in excess of 25 percent of the total bonus in a lump sum at the time that the period of obligated service commences under the agreement.

(B) If the Secretary makes a lump-sum payment under subparagraph (A) of this paragraph, the remaining balance of the bonus shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement.

(d)(1) A bonus paid to any individual under this section shall be in addition to any pay or allowance to which the individual is entitled.

(2) The amount of a bonus paid under this section shall not be considered to be basic pay for the purposes of sections 5551, 5552, and 5595 of title 5, chapters 81, 83, 84, and 87 of such title, or any other provision of law creating an entitlement to benefits based on basic pay.

(e) At least once each year the Secretary, upon the recommendation of the Under Secretary for Health, shall determine the specific health-care facilities and clinical services, if any, as to which there are significant problems with respect to the recruitment and retention of registered nurses. Upon making any such determination, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and the House of Representatives of the determination and the basis for the determination.

(f) The Secretary may enter into agreements under this section with individuals in a health profession other than nursing (and other than a health profession for which special pay may be provided under subchapter III) if the Secretary determines that there are significant problems with respect to recruitment and retention of employees in that health profession. The Secretary's authority to enter into any such agreement under this section, and such agreement, shall be subject to the provisions of this section in the same manner as are the authority to enter into an agreement under this section with a registered nurse and such an agreement.

(g)(1) Except as provided in paragraph (2) of this subsection, an individual who voluntarily, or because of misconduct, fails to perform services as assigned by the Secretary for the period of obligated service provided in an agreement under this section shall refund to the United States the amount by which the total amount of bonus payments received by that individual under this section exceeds the amount that such individual would have received under an agreement under this section to serve for the period of obligated service actually served (as determined at the time the agreement is entered into). If the period actually served is less than two years, the amount to be refunded is the entire amount paid to the individual.

(2) An individual shall not be required to make a refund under paragraph (1) of this subsection if the Secretary determines, in accordance with regulations prescribed under subsection (h) of this section, that the individual's failure to per-

form services for the period of obligated service is due to circumstances (not including separation for cause) beyond the control of the individual.

(3) An obligation to refund any portion of a bonus payment under this subsection is, for all purposes, a debt owed to the United States.

(4) The provisions of this subsection and the specific amounts that the individual could be required to refund shall be disclosed to the individual at the time the agreement is entered into and shall be clearly set forth in the contract.

(h) The Secretary shall prescribe regulations to carry out this section.

(Added Pub. L. 100-322, title II, §212(a)[(1)], May 20, 1988, 102 Stat. 514, §4120; renumbered §7458 and amended Pub. L. 102-40, title IV, §401(c)(4), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(h)(4), Nov. 2, 1994, 108 Stat. 4688.)

#### AMENDMENTS

1994—Pub. L. 103-446 substituted "Recruitment and retention bonus pay" for "Recruitment and retention bonus pay for nurses and certain other health-care personnel" as section catchline.

1992—Subsec. (e). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991—Pub. L. 102-40 renumbered section 4120 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsecs. (b)(1), (c)(2), (e). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (f). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places and "Secretary's" for "Administrator's".

Pub. L. 102-40 substituted "subchapter III" for "section 4118 of this title".

Subsecs. (g)(1), (2), (h). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

#### SUBCHAPTER V—DISCIPLINARY AND GRIEVANCE PROCEDURES

##### § 7461. Adverse actions: section 7401(1) employees

(a) Whenever the Under Secretary for Health (or an official designated by the Under Secretary for Health) brings charges based on conduct or performance against a section 7401(1) employee and as a result of those charges an adverse personnel action is taken against the employee, the employee shall have the right to appeal the action.

(b)(1) If the case involves or includes a question of professional conduct or competence in which a major adverse action was taken, such an appeal shall be made to a Disciplinary Appeals Board under section 7462 of this title.

(2) In any other case, such an appeal shall be made—

(A) through Department grievance procedures under section 7463 of this title, in any case that involves or includes a question of professional conduct or competence in which a major adverse action was not taken or in any case of an employee who is not covered by a

collective bargaining agreement under chapter 71 of title 5; or

(B) through grievance procedures provided through collective bargaining under chapter 71 of title 5 or through Department grievance procedures under section 7463 of this title, as the employee elects, in the case of an employee covered by a collective bargaining agreement under chapter 71 of title 5 that does not involve or include a question of professional conduct or competence.

(c) For purposes of this subchapter—

(1) Section 7401(1) employees are employees of the Department employed on a full-time basis under a permanent appointment in a position listed in section 7401(1) of this title (other than interns and residents appointed pursuant to section 7406 of this title).

(2) A major adverse action is an adverse action which includes any of the following:

- (A) Suspension.
- (B) Transfer.
- (C) Reduction in grade.
- (D) Reduction in basic pay.
- (E) Discharge.

(3) A question of professional conduct or competence is a question involving any of the following:

- (A) Direct patient care.
- (B) Clinical competence.

(d) An issue of whether a matter or question concerns, or arises out of, professional conduct or competence is not itself subject to any grievance procedure provided by law, regulation, or collective bargaining and may not be reviewed by any other agency.

(e) Whenever the Secretary proposes to prescribe regulations under this subchapter, the Secretary shall publish the proposed regulations in the Federal Register for notice-and-comment not less than 30 days before the day on which they take effect.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 202; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

#### REGULATIONS

Section 204 of Pub. L. 102-40 provided that: “The Secretary of Veterans Affairs shall prescribe regulations under subchapter V of chapter 74 of title 38, United States Code (as added by section 203), not later than 180 days after the date of the enactment of this Act [May 7, 1991]. Such regulations shall be published in the Federal Register for notice-and-comment not less than 30 days before the day on which they take effect.”

### § 7462. Major adverse actions involving professional conduct or competence

(a)(1) Disciplinary Appeals Boards appointed under section 7464 of this title shall have exclusive jurisdiction to review any case—

(A) which arises out of (or which includes) a question of professional conduct or competence of a section 7401(1) employee; and

(B) in which a major adverse action was taken.

(2) The board shall include in its record of decision in any mixed case a statement of the board's exclusive jurisdiction under this subsection and the basis for such exclusive jurisdiction.

(3) For purposes of paragraph (2), a mixed case is a case that includes both a major adverse action arising out of a question of professional conduct or competence and an adverse action which is not a major adverse action or which does not arise out of a question of professional conduct or competence.

(b)(1) In any case in which charges are brought against a section 7401(1) employee which arises out of, or includes, a question of professional conduct or competence which could result in a major adverse action, the employee is entitled to the following:

(A) At least 30 days advance written notice from the Under Secretary for Health or other charging official specifically stating the basis for each charge, the adverse actions that could be taken if the charges are sustained, and a statement of any specific law, regulation, policy, procedure, practice, or other specific instruction that has been violated with respect to each charge, except that the requirement for notification in advance may be waived if there is reasonable cause to believe that the employee has committed a crime for which the employee may be imprisoned.

(B) A reasonable time, but not less than seven days, to present an answer orally and in writing to the Under Secretary for Health or other deciding official, who shall be an official higher in rank than the charging official, and to submit affidavits and other documentary evidence in support of the answer.

(2) In any case described in paragraph (1), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(3)(A) If a proposed adverse action covered by this section is not withdrawn, the deciding official shall render a decision in writing within 21 days of receipt by the deciding official of the employee's answer. The decision shall include a statement of the specific reasons for the decision with respect to each charge. If a major adverse action is imposed, the decision shall state whether any of the charges sustained arose out of a question of professional conduct or competence. If any of the charges are sustained, the notice of the decision to the employee shall include notice of the employee's rights of appeal.

(B) Notwithstanding the 21-day period specified in subparagraph (A), a proposed adverse action may be held in abeyance if the employee requests, and the deciding official agrees, that the employee shall seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973. Any such abeyance of a proposed action may not extend for more than one year.

(4)(A) The Secretary may require that any answer and submission under paragraph (1)(B) be

submitted so as to be received within 30 days of the date of the written notice of the charges, except that the Secretary shall allow the granting of extensions for good cause shown.

(B) The Secretary shall require that any appeal to a Disciplinary Appeals Board from a decision to impose a major adverse action shall be received within 30 days after the date of service of the written decision on the employee.

(c)(1) When a Disciplinary Appeals Board convenes to consider an appeal in a case under this section, the board, before proceeding to consider the merits of the appeal, shall determine whether the case is properly before it.

(2) Upon hearing such an appeal, the board shall, with respect to each charge appealed to the board, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part. If the deciding official is sustained (in whole or in part) with respect to any such charge, the board shall—

(A) approve the action as imposed;

(B) approve the action with modification, reduction, or exception; or

(C) reverse the action.

(3) A board shall afford an employee appealing an adverse action under this section an opportunity for an oral hearing. If such a hearing is held, the board shall provide the employee with a transcript of the hearing.

(4) The board shall render a decision in any case within 45 days of completion of the hearing, if there is a hearing, and in any event no later than 120 days after the appeal commenced.

(d)(1) After resolving any question as to whether a matter involves professional conduct or competence, the Secretary shall cause to be executed the decision of the Disciplinary Appeals Board in a timely manner and in any event in not more than 90 days after the decision of the Board is received by the Secretary. Pursuant to the board's decision, the Secretary may order reinstatement, award back pay, and provide such other remedies as the board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(2) If the Secretary finds a decision of the board to be clearly contrary to the evidence or unlawful, the Secretary may—

(A) reverse the decision of the board, or

(B) vacate the decision of the board and remand the matter to the Board for further consideration.

(3) If the Secretary finds the decision of the board (while not clearly contrary to the evidence or unlawful) to be not justified by the nature of the charges, the Secretary may mitigate the adverse action imposed.

(4) The Secretary's execution of a board's decision shall be the final administrative action in the case.

(e) The Secretary may designate an employee of the Department to represent management in any case before a Disciplinary Appeals Board.

(f)(1) A section 7401(1) employee adversely affected by a final order or decision of a Disciplinary Appeals Board (as reviewed by the Secretary) may obtain judicial review of the order or decision.

(2) In any case in which judicial review is sought under this subsection, the court shall review the record and hold unlawful and set aside any agency action, finding, or conclusion found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 203; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3)(B), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in subpars. (A) and (B).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7461, 7463, 7464 of this title.

### § 7463. Other adverse actions

(a) The Secretary shall prescribe by regulation procedures for the consideration of grievances of section 7401(1) employees arising from adverse personnel actions in which each action taken either—

(1) is not a major adverse action; or

(2) does not arise out of a question of professional conduct or competence.

Disciplinary Appeals Boards shall not have jurisdiction to review such matters, other than as part of a mixed case (as defined in section 7462(a)(3) of this title).

(b) In the case of an employee who is a member of a collective bargaining unit under chapter 71 of title 5, the employee may seek review of an adverse action described in subsection (a) either under the grievance procedures provided through regulations prescribed under subsection (a) or through grievance procedures determined through collective bargaining, but not under both. The employee shall elect which grievance procedure to follow. Any such election may not be revoked.

(c)(1) In any case in which charges are brought against a section 7401(1) employee which could result in a major adverse action and which do not involve professional conduct or competence, the employee is entitled to the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title.

(2) In any other case in which charges are brought against a section 7401(1) employee, the employee is entitled to—

(A) an advance written notice stating the specific reason for the proposed action, and

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(d) Grievance procedures prescribed under subsection (a) shall include the following:

(1) A right to formal review by an impartial examiner within the Department of Veterans Affairs, who, in the case of an adverse action arising from a question of professional conduct or competence, shall be selected from the panel designated under section 7464 of this title.

(2) A right to a prompt report of the findings and recommendations by the impartial examiner.

(3) A right to a prompt review of the examiner's findings and recommendations by an official of a higher level than the official who decided upon the action. That official may accept, modify, or reject the examiner's recommendations.

(e) In any review of an adverse action under the grievance procedures prescribed under subsection (a), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 205.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7461, 7464 of this title.

### § 7464. Disciplinary Appeals Boards

(a) The Secretary shall from time to time appoint boards to hear appeals of major adverse actions described in section 7462 of this title. Such boards shall be known as Disciplinary Appeals Boards. Each board shall consist of three employees of the Department, each of whom shall be of the same grade as, or be senior in grade to, the employee who is appealing an adverse action. At least two of the members of each board shall be employed in the same category of position as the employee who is appealing the adverse action. Members of a board shall be appointed from individuals on the panel established under subsection (d).

(b)(1) In appointing a board for any case, the Secretary shall designate one of the members to be chairman and one of the members to be secretary of the board, each of whom shall have authority to administer oaths.

(2) Appointment of boards, and the proceedings of such boards, shall be carried out under regulations prescribed by the Secretary. A verbatim record shall be maintained of board hearings.

(c)(1) Notwithstanding sections 5701 and 7332 of this title, the chairman of a board, upon request

of an employee whose case is under consideration by the board (or a representative of that employee) may, in connection with the considerations of the board, review records or information covered by those sections and may authorize the disclosure of such records or information to that employee (or representative) to the extent the board considers appropriate for purposes of the proceedings of the board in that case.

(2) In any such case the board chairman may direct that measures be taken to protect the personal privacy of individuals whose records are involved. Any person who uses or discloses a record or information covered by this subsection for any purpose other than in connection with the proceedings of the board shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

(d)(1) The Secretary shall provide for the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. Those employees shall constitute the panel from which board members in a case are appointed. The Secretary shall provide (without charge) a list of the names of employees on the panel to any person requesting such list.

(2) The Secretary shall announce periodically, and not less often than annually, that the roster of employees on the panel is available as described in paragraph (1). Such announcement shall be made at Department medical facilities and through publication in the Federal Register. Notice of a name being on the list must be provided at least 30 days before the individual selected may serve on a Board or as a grievance examiner. Employees, employee organizations, and other interested parties may submit comments to the Secretary concerning the suitability for service on the panel of any employee whose name is on the list.

(3) The Secretary shall provide training in the functions and duties of Disciplinary Appeals Boards and grievance procedures under section 7463 of this title for employees selected to be on the panel.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 206.)

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7462, 7463 of this title.

### SUBCHAPTER VI—REGIONAL MEDICAL EDUCATION CENTERS

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7320, 7325 of this title.

### § 7471. Designation of Regional Medical Education Centers

(a) In carrying out the Secretary's functions under section 7302 of this title with regard to the

training of health personnel, the Secretary shall implement a program under which the Secretary shall designate as Regional Medical Education Centers such Department hospitals as the Secretary determines appropriate to carry out the provisions of this subchapter.

(b) Each Regional Medical Education Center (hereinafter in this subchapter referred to as "Center") designated under subsection (a) shall provide continuing medical and related education programs for personnel eligible for training under this subchapter. Such programs shall include the following:

(1) The teaching of newly developed medical skills and the use of newly developed medical technologies and equipment.

(2) Advanced clinical instruction.

(3) The opportunity for conducting clinical investigations.

(4) Clinical demonstrations in the use of new types of health personnel and in the better use of the skills of existing health personnel.

(5) Routine verification of basic medical skills and, where determined necessary, remediation of any deficiency in such skills.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 237.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4121 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7362 of this title.

### § 7472. Supervision and staffing of Centers

(a) Centers shall be operated under the supervision of the Under Secretary for Health and shall be staffed with personnel qualified to provide the highest quality instruction and training in various medical and health care disciplines.

(b) As a means of providing appropriate recognition to persons in the career service of the Administration who possess outstanding qualifications in a particular medical or health care discipline, the Under Secretary for Health shall from time to time and for such period as the Under Secretary for Health considers appropriate assign such persons to serve as visiting instructors at Centers.

(c) Whenever the Under Secretary for Health considers it necessary for the effective conduct of the program provided for under this subchapter, the Under Secretary for Health may contract for the services of highly qualified medical and health personnel from outside the Department to serve as instructors at such Centers.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4122 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" wherever appearing.

### § 7473. Personnel eligible for training

(a) The Under Secretary for Health shall determine the manner in which personnel are to be selected for training in the Centers. Preference shall be given to career personnel of the Administration.

(b) To the extent that facilities are available medical and health personnel from outside the Administration may, on a reimbursable basis, be provided training in the Centers. Such reimbursement may include reciprocal training of personnel of the Administration provided under sharing arrangements entered into by the Under Secretary for Health and the heads of the entities providing such reciprocal training. Any amounts received by the United States as reimbursement under this subsection shall be credited to the applicable Department medical appropriation account.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4123 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in subsecs. (a) and (b).

### § 7474. Consultation

The Under Secretary for Health shall carry out this subchapter after consultation with the special medical advisory group established pursuant to section 7312(a) of this title.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4124 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1992—Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

## [CHAPTER 75—RENUMBERED]

#### CODIFICATION

Former chapter 75 which consisted of sections 4201 to 4210 was renumbered chapter 78 of this title and transferred to follow chapter 76 of this title, and sections 4201 to 4210 were renumbered sections 7801 to 7810 of this title, respectively.

## CHAPTER 76—HEALTH PROFESSIONALS EDUCATIONAL ASSISTANCE PROGRAM

### SUBCHAPTER I—GENERAL

Sec.

7601. Establishment of program; purpose.